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THE SECURITIES ACTS AMENDMENTS OF 1989

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Mr. Riegle, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 1712]

INTRODUCTION

On September 20, 1989, the Senate Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported a bill, the Securities Acts Amendments of 1989, to authorize appropriations for the Securities and Exchange Commission for fiscal years 1990 and 1991, and for certain other purposes.

The Securities Acts Amendments of 1989 includes, in addition to provisions authorizing appropriations for the Securities and Exchange Commission ("SEC" or "Commission") and authorizing the Commission to determine compensation for its employees, revised versions of S. 646, "The International Securities Enforcement Cooperation Act of 1989"; S. 649, "The Shareholder Communications Improvement Act of 1989"; and S. 651, "The Trust Indenture Reform Act of 1989". The Committee voted to adopt the bill by a voice vote, without opposition, and to report the bill to the Senate.

PURPOSE AND SUMMARY

The Securities Acts Amendments of 1989 has four major purposes. First, the legislation seeks to address the Commission's funding and personnel needs by authorizing appropriations for fiscal years 1990 and 1991 in the amounts of $178,023,000 and $212,609,000, respectively, and providing the Commission authority to determine the compensation of its employees. Second, the legislation seeks to address the problem of international securities fraud by giving the Commission additional authority to improve coordination of international enforcement efforts. Third, the legisla-

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tion closes gaps in current law with respect to providing information to shareholders. Fourth, the legislation streamlines and modernizes the law applicable to the public issuance of debt securities.

1. SEC funding and staff resources

The major purpose of Title I, the Securities and Exchange Commission Authorization Act of 1989, is to authorize appropriations for the Commission for fiscal years 1990 and 1991. The authorization levels provided in the legislation would address the Commission's pressing need for additional staff to regulate securities markets that have grown dramatically in size and complexity. For the past decade, SEC staff levels have remained virtually static, while trading volume, corporate takeovers, underwritings and the number of securities professionals have soared. During this period, the securities markets have expanded beyond U.S. borders, raising concerns about the continued effectiveness of the SEC's ability to protect investors in the global trading environment. Major securities frauds have also placed increased demands on the Commission's enforcement staff. The funding levels provided in the legislation would provide for additional staff positions in areas of critical need.

In addition, the legislation would address the SEC's mounting problems in attracting and retaining qualified lawyers, accountants and other professionals, as well as support staff. There is a wide disparity between SEC and private sector pay. According to a SEC study, the problem has accelerated in recent years. First year lawyers at the SEC are currently paid approximately $28,000 annually, while private sector attorneys at major firms in New York City and Washington, D.C. begin at $70,000 or more. In addition, there is now a wide and growing disparity between the pay of SEC professionals and that of other federal financial institution regulators. With passage of the Financial Institutions Reform, Recovery and Enforcement Act, all financial regulators under the jurisdiction of the Banking Committee, except for the SEC, can set pay scales for their own employees. SEC officials have expressed concern that, unless they can pay competitive salaries, they not only will lose staff to the private sector, but to the other financial regulators as well.

The legislation would also give the SEC authority to lease and manage its own space, similar to other financial regulators. An SEC staff report to the Committee states that the agency has experienced severe overcrowding as a result of GSA space limitations, and has encountered delays in leasing and pays more than other agencies that lease their own space. The SEC estimates that the agency would realize net savings of over $800,000 per year if it were able to lease and manage its own space.

2. International securities enforcement cooperation

The major purpose of Title II, the International Securities Enforcement Cooperation Act of 1989, is to address the problem of international securities fraud by strengthening international cooperation in the enforcement of securities laws. The rapid internationalization of the securities markets over the past several years has resulted in increased opportunities for transnational fraud. Although the SEC has been successful in bringing enforcement actions involving trading originating off-shore, the Committee believes that additional resources and enforcement tools are necessary.

In legislation enacted in the 100th Congress, the Commission was granted the authority to conduct investigations at the request of foreign securities authorities, in contemplation of reciprocal investigative assistance by those foreign authorities. However, the SEC has expressed concern that, in the past, negotiations of bilateral assistance agreements have been frustrated by the SEC's inability to assure foreign authorities that documents and testimony they transmit to the SEC will be kept confidential, as is often required under their resident laws. Title II would supplement the legislation passed last year by giving the SEC authority to maintain the confidentiality of certain foreign evidence. It therefore would promote the negotiation of mutual assistance agreements, which enhance the Commission's ability to obtain evidence for the investigation and prosecution of securities law violators operating in or through foreign countries.

Title II also would clarify the Commission's authority to provide nonpublic documents in its possession to foreign and domestic authorities. In addition, the Commission would be given expanded authority to bring administrative proceedings against securities professionals based upon their illegal activities in foreign countries. The legislation also would expand the authority of a self-regulatory organization to deny membership to persons based upon their conduct abroad. Finally, the legislation would permit the Commission to accept reimbursement from a foreign securities authority for expenses incurred by the Commission in providing investigative assistance.

3. Improvements in shareholder communications

The major purpose of Title III of the bill, the Shareholder Communications Improvement Act of 1989, is to improve the flow of information between security holders and issuers of shares with respect to both proxy materials and information statements, thereby, protecting the right of security holders to participate in corporate decisions.

There are millions of shareholders whose stock is held at banks or broker-dealers and is not registered in the name of the real, or "beneficial," shareholder. The shares remain listed on the books of corporations in the name of the bank or broker, the "nominee." When corporations mail proxy or other material to their shareholders, those materials in many cases are sent to the bank or broker nominee, and not to the beneficial shareholder. In 1985, Congress adopted legislation to help companies communicate with those shareholders, by giving the Commission authority to write rules to assist companies in sending proxy materials and certain other materials directly to shareholders whose shares were held at banks. However, the legislation did not include mutual fund shareholders, nor did it include the sending of information statements to shareholders in cases where proxies were not solicited. This legislation closes that gap in current law and would facilitate greater dissemination of information to shareholders.

4. Reform of the Trust Indenture Act

The principal purpose of Title IV is to modernize the Trust Indenture Act of 1939 (Act) which regulates the public issuance of debt securities. In the fifty years since its enactment, the Act has not been amended in any important respect. During the same period, however, the public market for debt securities has undergone significant changes. Innovations in the forms of debt instruments have produced securities, such as collateralized mortgage obligations, which were not contemplated in 1939. Technological developments and regulatory changes have resulted in new distribution methods, including "shelf" offerings, direct placements and "dutch auctions." Finally, public securities markets have been profoundly changed by internationalization. Enactment of Title IV would conform the Act to the present realities of the market and make it adaptable to future developments, while facilitating the administration of the Act.

Title IV would effect four principal revisions to the Act. The procedures for qualifications of indentures under the Act would be simplified and strengthened. Broad exemptive authority would be granted to the Commission to provide flexibility in administration and adaptability to future developments. The determination of conflicts of interest disqualifying a trustee from service would be made at the time of a default under the indenture. Trusteeships by foreign persons would be conditionally permitted in order to encourage continued internationalization of securities markets. The legislation would also effect a number of technical changes to the Act.

HISTORY OF THE LEGISLATION

The Securities Acts Amendments of 1989 are the consolidation of legislation authorizing appropriations for the SEC for fiscal years 1990 and 1991 with three legislative proposals that have been the subject of Committee consideration since the 100th Congress.

Title I, authorizing appropriations for the SEC and providing authority for the agency to set compensation levels for its employees and lease and manage its own space, is the culmination of the Committee's comprehensive review of the SEC's Budget Authorization Request for fiscal years 1990-1992. The SEC submitted its budget authorization request to the Committee on April 4, 1989. The Subcommittee on Securities held a hearing on April 18, 1989 during which SEC Chairman David S. Ruder explained in detail the SEC's programs, resources and funding needs to carry out the SEC's responsibilities under the federal securities laws. The Subcommittee also received letters in support of increased funding for the SEC from the Securities Industry Association, National Association of Manufacturers, Investment Company Institute, National Independent Energy Producers, American Public Power Association, National Association of Bond Lawyers and the American Bar Association.

Title II, The International Securities Law Enforcement Cooperation Act of 1989, represents a continuation of the Committee's strong support of legislative initiatives begun in the 100th Congress to promote strong enforcement of securities laws in the international marketplace. The International Securities Enforcement Cooperation Act of 1988 (S. 2544) was introduced on June 21, 1988. The Committee held hearings on the legislation on June 29, 1988 and received testimony and written submissions of support from SEC Chairman David S. Ruder; Mary Mochary, Principal Deputy Legal Advisor of the Department of State; Mark M. Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice; and John C. Whitehead, Deputy Secretary of State. The bill was unanimously reported out of the Committee on July 27, 1988 (S. Rep. 100–461). Certain provisions of S. 2544 were incorporated in the Insider Trading and Securities Fraud Enforcement Act of 1988 (H.R. 5133) which passed the Senate on October 21, 1988 and was signed by the President on November 19, 1988 (Public Law 100–704).

On March 1, 1989, the SEC submitted to Congress the International Securities Law Enforcement Cooperation Act of 1989. The bill was introduced by Senators Dodd and Heinz, by request, on March 17, 1989 (S. 646). The Securities Subcommittee held a hearing on April 18, 1989 during which SEC Chairman David S. Ruder stressed the necessity of providing the SEC with additional tools to combat international securities fraud. In addition, the Securities Subcommittee held two days of hearings on the Globalization of the Securities Markets, which included testimony of S. 646. On June 14, 1989, the Securities Subcommittee heard testimony from Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System; John Heimann, Vice Chairman, Merrill Lynch Capital Markets; Robert Hormats, Vice-Chairman, Goldman, Sachs International Inc.; and Alan S. Macdonald, Group Executive, North American Investment Bank, Citicorp. On June 15, 1989, the Securities Subcommittee heard testimony from David S. Ruder, Chairman of the SEC; John M Hennessey, Vice Chairman and CEO-designate of CS First Boston, Inc.; The Rt. Hon. Lord Camoys, Deputy Chairman, Barclays de Zoete Wedd Holdings Limited; and Stephen H. Axilrod, Vice Chairman, The Nikko Securities Co. International, Inc. Each of the witnesses emphasized the importance of maintaining the integrity of international securities markets and the importance of securities law enforcement.

Title III, the Shareholder Communications Act of 1989, is an enhancement and extension of shareholder communications measures enacted by Congress in the Shareholder Communications Act of 1985 (Public Law 99–222). This legislation was submitted by the SEC to the Congress on July 21, 1988 and introduced by Senators Dodd and Heinz, by request, on March 17, 1989 (S. 649). On April 18, 1989, the Securities Subcommittee held a hearing on S. 649 during which SEC Chairman David Ruder explained the importance of this legislation. The Committee also received written comments on the bill from the American Bankers Association.

Title IV, the Trust Indenture Reform Act of 1989, is the culmination of efforts that began in 1987 to streamline and modernize legislation enacted by Congress more than fifty years ago. The SEC initially submitted reform legislation to the Committee on November 17, 1987. That proposal was introduced in the 100th Congress as the Trust Indenture Reform Act of 1988 (S. 2566) on June 24, 1988. The bill was reintroduced by Senators Dodd and Heinz, by request, on March 17, 1989 (S. 651). The Securities Subcommittee held a hearing on S. 651 on April 18, 1989 during which SEC Chairman David S. Ruder testified about the need for this reform legislation. The Committee also received extensive comments from the Ad Hoc Corporate Trust Industry Group, representing a number of institutions which conduct business as indenture trustees.

TITLE I—SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION ACT

Title I of the legislation would authorize appropriations for the Securities and Exchange Commission of $178,023,000 for fiscal year 1990 and $212,609,000 for fiscal year 1991. In addition, the legislation would give the SEC authority similar to the banking, thrift and credit union regulators to fix the compensation of SEC employees, without regard to the provisions of Title Five of the U.S. Code, which governs the classification and pay rates of government employees. The legislation would also give the SEC authority similar to the banking, thrift and commodity futures regulators to lease and manage its own space, which would yield substantial cost savings to the Commission.

Background and need for the legislation

The U.S. securities markets for many years have been considered the strongest, fairest, and most liquid capital markets in the world. These markets have served to raise capital for thousands of American companies, to be used for long-term investments and the creation of jobs for millions of Americans. The American securities markets are a vital national asset, and maintaining their strength and integrity is critical to our long-term economic growth and national prosperity.

The Securities and Exchange Commission is the primary federal regulator with responsibility over these markets. The Commission was created by the Securities Exchange Act of 1934, and it currently administers and enforces seven major statutes. Those statutes, and the rules promulgated by the Commission, are intended to provide for full and fair disclosure to investors, and the regulation of broker-dealers, investment advisers, investment companies, and other market participants, as well as the regulation of public utility holding companies.

In the past decade, the U.S. capital markets have grown dramatically in size and complexity, while the SEC staff has remained at levels only slightly above those of 1980. As a result, there has been a significant and growing imbalance between the level of SEC resources and the explosive growth in the markets under its jurisdiction. Since 1980:

> Annual trading volume on the stock exchanges has grown more than 300 percent, and over-the-counter trading volume has increased more than 465 percent;
>
> The number of securities firms has increased approximately 90 percent, and the number of registered representatives has increased 145 percent;
>
> The number of investment companies has grown 146 percent, and assets of these companies have increased 411 percent;
>
> The number of investment advisers has more than tripled, and assets under management have increased more than 1,000

percent, now totalling more than $5.3 trillion, which is greater than the combined deposits of banks and savings and loans;

The number of registration statements filed annually with the SEC has doubled; and

The number of tender offer filings has increased over 670 percent.

With this increase in activity over the past decade, investor complaints to the SEC have grown more than 250 percent. There has been a dramatic rise in the size and complexity of enforcement cases as well.

Moreover, the markets have become increasingly complex, with the development and growth of new securities and securities derivative products, such as stock index futures and options, and new trading strategies, such as program trading and portfolio insurance strategies. The securities markets have also become international in scope, presenting difficult regulatory and enforcement problems for the SEC. In the past decade, foreign trading in U.S. stocks grew more than 550 percent, and U.S. trading in foreign stocks increased 950 percent.

However, during this same period, SEC staff levels have remained virtually static. Total staff years in 1980 were 2,041, growing to only 2,050 in 1988. In 1989, it is estimated that staff years will total 2,131, representing less than a 5 percent increase in almost a decade.

As a result, industry leaders have called for significant budget increases for the Commission. The President of the Securities Industry Association wrote the Securities Subcommittee:

> No one in our industry benefits if the SEC is underfunded and ill-equipped to detect, pursue, and prosecute those who betray the public's trust. Though we as an industry may disagree with the Commission from time to time, we support the work of the SEC and strongly believe that this agency must have additional resources if it is to carry out its statutory responsibilities in today's market.

The President of the National Association of Manufacturers also wrote:

> Our nation's recent experience with the thrift industry has shown that dollars saved by limited Federal oversight pale in comparison to the dollars lost through mismanagement and fraud.

Major SEC program areas

In its Budget Estimate for Fiscal Year 1990 for the SEC, the Administration requested appropriations sufficient to provide staff increases in every major program area. The Committee believes it is critical that the Commission receive the full $168.7 million requested and that the funds be directed to additional staff positions in the program areas discussed below. If the Commission determines to allocate funding and staff resources in a manner substantially different from its Budget Estimate, the Commission should consult with the Committee to discuss the changed circumstances or other reasons for the reallocation of staff.

The authorization level of $178,023,000 for fiscal year 1990 and $212,609,000 for fiscal year 1991 would authorize funding to accommodate additional demands on Commission resources with the passage of new legislation, the increased globalization of the market, and other enforcement and regulatory needs in a changing market environment.

Disclosure to investors

The requirement that companies offering securities to the public make full disclosure of information to investors was the cornerstone of the first federal securities law, the Securities Act of 1933. The SEC was created the following year in 1934, and requirements were added that disclosure documents for the sale of securities, as well as periodic reports, be filed with the SEC for its review. There are now more than 14,000 public companies filing documents with the Commission. These companies range from the smallest "penny stock" issuer, to major multinational corporations. All tender offers, proxy solicitations, and going-private transactions involving public companies require the disclosure of material information to shareholders and the filing of disclosure documents with the SEC for its review. The disclosure requirements also extend to certain officers and directors who buy and sell a company's securities, as well as persons buying substantial amounts of shares.

In 1988, securities offerings valued at more than $400 billion and a total of more than 330,000 disclosure documents were registered and filed with the Commission. Since 1980, the number of disclosure documents filed with the Commission has increased dramatically. For example, the number of new registration statements filed annually has more than doubled, and the number of tender offer filings has increased over 670 percent. The Commission staff responsible for reviewing disclosure documents filed in connection with takeovers, leveraged buyouts, proxy contests and other contests for corporate control have come under increased pressure during recent years, as the U.S. has experienced the biggest merger and acquisition wave in history. In the period 1986–1988, merger and takeover activity was valued at more than $597.9 billion. Moreover, securities offered to the public have become increasingly complex, and the increase in foreign offerings made in the U.S. have raised complicated disclosure issues.

However, the staff years allocated to this important area have remained close to 1980 levels. Consequently, there are delays in reviewing certain documents, such as offering statements, which delays the capital-raising process for some companies. In addition, an increasing number of disclosure documents are either partially reviewed, or not reviewed at all, under the Commission's "selective review" program. This raises questions about whether the level of SEC review is adequate to serve as a deterrent to filing of false and misleading disclosure statements. Under current staffing levels, it is expected that the SEC will review 78 percent of all new registration statements filed in 1989, but it will review only 12 percent of all annual reports, which are the primary disclosure documents for securities traded in the secondary markets.

In its 1990 Budget Estimate, the SEC requested funds sufficient to add 46 staff positions to its disclosure program. The Committee believes these positions are critically needed to increase and enhance the level of disclosure review and ensure the integrity of the capital-raising process.

Some members of the Committee have expressed concern about the Commission's proposed amendments to the rules under Section 16(a) of the Exchange Act, requiring the filing of ownership reports by officers, directors and 10 percent shareholders. Questions have been raised about the proposed reduction in the number of corporate officials who would be subject to the reporting requirements under the new rules, as well as delays in filing reports on the exercise of stock options. Senator Graham raised questions about these matters in connection with a hearing by the Subcommittee on Securities April 18, 1989. Committee members will continue to work with the Commission prior to the adoption of final rules in this area.

Market regulation and oversight

The SEC oversees the regulation and examination of all registered broker-dealers and self-regulatory organizations (the stock exchanges and the National Association of Securities Dealers). The broker-dealer community subject to SEC regulation ranges from individuals selling "penny stocks" and limited partnerships, to regional broker-dealers, to global firms with operations in the major international financial centers. The broker-dealer affiliates of banks also fall under the SEC's jurisdiction.

There are approximately 12,700 firms and 480,000 registered representatives under the Commission's jurisdiction, increases of 88 percent and 145 percent, respectively, over 1980 levels. In addition, trading volume has increased dramatically. Since 1980, annual trading volume on the stock exchanges has grown more than 300 percent, and over-the-counter volume has increased more than 465 percent.

The unprecedented stock market decline surrounding "Black Monday" and subsequent volatility experienced over the past two years have greatly exacerbated pressures on financial and human resources at the SEC. The Commission staff has been called upon to examine the feasibility of proposed market reforms, such as coordinated clearance and settlement systems, circuit breakers and trading collars, program trading and index arbitrage, as well as maintaining coordination with and among other regulators and self-regulatory organizations. In addition, during the coming year, the Commission staff must deal with complicated issues ranging from the debate over multiple trading of options, to the jurisdictional concerns related to hybrid securities products such as index participations. As the markets become increasingly international in scope, problems involving clearance and settlement in the global markets and the regulation of securities firms spanning many jurisdictions will place increased demands on staff assigned to this program area.

In this environment, staff years devoted to market regulation actually decreased slightly during the period 1980–88. The SEC, accordingly, has had to rely more heavily on the effectiveness of the self-regulatory organizations (SROs)—the stock exchanges and the NASD. For example, the SEC staff itself will examine approximately 500 securities firms in 1989, less than 4 percent of all firms. The SROs, therefore, are an essential first line of defense in policing securities firms.

In its 1990 Budget Estimate, the SEC has requested funds sufficient to add 36 staff positions to this important program area. The Committee believes additional staff in this amount is needed to protect the integrity of the capital markets.

Investment companies and investment advisers, and public utility holding company regulation

The Commission also regulates and examines all investment companies and investment advisers. These include small financial planners working with unsophisticated customers, to firms managing billions of dollars in mutual fund and pension fund assets.

Since 1980, the number of investment companies has grown 146 percent and assets of these companies increased 411 percent, to $1.2 trillion. Shares of mutual funds are now owned by approximately 30 million individuals, or 25 percent of the households in the United States. The number of investment advisers, some of which are financial planners, has more than tripled since 1980, and assets under management increased over 1,000 percent, now totaling $5.3 trillion—greater than the combined deposits of banks and savings and loans, and amounting to 20–25 percent of all financial assets owned by Americans. Increasing numbers of funds are operating offshore, further complicating regulatory and supervisory problems for the SEC.

During this phenomenal period of growth, SEC staff assigned to this area has increased only 13 percent. The SEC's 1990 budget estimate states that this program area is "now critically understaffed." The SEC inspects investment advisers on average once every 12 years and inspects assets under management about once every 20 years. As a result, according to the SEC, "the program is already at a point where inspections may have lost much of their deterrent effect." Investment companies are being inspected approximately once every five years.

Given the complexity of the investment environment, the numbers of investment companies and investment advisers is expected to continue to grow, as individuals increasingly turn to professionals for advice. Thus, in recent years Congress has explored with the SEC and various industry groups the feasibility of establishing industry self-regulatory organizations in this area, or using existing SROs such as the NASD, to inspect investment advisers. The Commission recently submitted a legislative proposal entitled "The Investment Adviser Self-Regulation Act," which was introduced as S. 1410. Should the measure be adopted, staffing needs in this area will not diminish, since additional staff resources will be required to direct the implementation of the legislation and the initial rulemaking under the law. Moreover, as debate over this measure continues into the next session, the SEC continues to experience pressing staffing needs in this area.

The SEC also regulates certain public utility holding companies, under the Public Utility Holding Company Act. Interstate holding companies are required to register with the SEC if they have subsidiaries engaged in generating, transmitting, or distributing electric energy or are engaged in the retail distribution of gas. The SEC is so understaffed in this area that industry officials have complained about long delays in the review of filings required under the law.

In its 1990 Budget Estimate, the SEC has requested an additional 51 positions in its investment management program. The Committee believes staff in this amount is critical to upgrading the inspection process and maintaining effective oversight in this area.

Enforcement

Through its Enforcement Division, the SEC prosecutes companies and their officials who make misleading or fraudulent disclosures to shareholders, corporate and securities industry officials who engage in insider trading and market manipulation, bidders and targets who engage in violations of laws relating to corporate takeovers and proxy contests, and individuals and corporations engaged in other violations of the federal securities laws.

With the extraordinary growth in the securities markets over the past decade, there has been a concomitant increase in indicators of fraud. Since 1980, the number of investor complaints to the SEC has grown more than 250 percent. In 1987, the SEC received over 40,000 complaints from investors. The SEC has been called upon to enforce the securities laws in cases ranging from the smallest "penny stock" issuer—it brought 25 cases in 1988—to massive securities fraud cases involving major Wall Street firms. Moreover, with the globalization of the securities markets, the Commission's enforcement staff must pursue complex cases against law violators operating offshore, often using foreign secrecy laws to hide their activities.

Events of recent years have placed increased demands on the Commission's Enforcement Division. In 1986, revelations of insider trading rocked Wall Street, as major firms and key figures in those firms were charged with illegal trading based on "inside" information about takeovers and other significant market transactions. The SEC brought charges against a number of investment bankers and arbitragers. In November 1986, as part of a settlement of Commission charges of securities law violations, arbitrageur Ivan Boesky agreed to repay $50 million in illegal profits and another $50 million in civil fines, in what was then the largest insider trading case in history.

In the following months, the SEC expanded its insider trading investigations, and in September of 1988 filed a multi-count complaint against Drexel Burnham Lambert, charging insider trading, parking, and other securities law violations. This resource-intensive case involved over 30 SEC lawyers and investigators. As part of the case, the SEC detailed lawyers and investigators to the office of the U.S. Attorney for the Southern District of New York to assist that office in the development of criminal charges in securities fraud cases. This year, Drexel settled criminal and civil charges against the firm, with an agreement to pay fines and restitution of $650 million, as well as other sanctions. Charges against former employees of Drexel and certain other individuals are pending.

Since 1980, the SEC's enforcement staff has increased only 5 percent, and these limitations have affected decisions to pursue certain cases. For example, SEC Chairman David Ruder testified that a shortage of staff resources was a factor in the SEC's decision not to pursue allegations of fraud in the sale of bonds of Washington Public Power Supply System, a $2.5 billion bankruptcy which was the largest municipal bond default in history. In its 1990 Budget Estimate, the Commission noted: "With the growing number of matters warranting enforcement action and the increasing number of cases subject to litigation, it will remain essential that the cases chosen for prosecution be concentrated on those with more serious violations or matters with significant impact."

The Commission requested appropriations sufficient to fund 32 additional positions in its enforcement program. The Committee believes an increase of at least this amount is critical to enable the Commission's enforcement program to deter and detect illegal activity in the securities markets.

The Committee is also concerned with the widespread fraud and manipulation that exists in the market for penny stocks. Senator Bryan of the Committee held a hearing of the Subcommittee on Consumer Affairs of the Committee on Commerce, Science, and Transportation in Las Vegas on August 22, 1989 in an effort to identify problems in the penny stock market and devise legislative solutions to these problems. That hearing confirmed the Committee's belief tht penny stock fraud and abuse are reaching epidemic proportions in the United States. It is important that the Commission also recognize the seriousness of this pervasive problem. While the Committee recognizes the efforts the Commission is already making in this area, particularly the establishment of its Task Force on Penny Stock Manipulation, the Committee believes that the Commission must do more. The Committee expects the Commission to take further steps to combat penny stock fraud and to protect small investors who are typically the victims of this type of manipulation. It is the intent of the Committee that the Commission will devote additional resources to fighting fraud and manipulation in the market for penny stocks. In addition, the Commission must devise an effective and lasting plan so that this problem, which was brought to the Committee's attention a number of years ago, will be curbed in the future. Given the criminal nature of this activity, the Committee urges the Commission to cooperate with, and make prompt referrals to, state and federal criminal authorities to ensure effective prosecution in this area.

Other areas of SEC activity

The high levels of SEC enforcement activity of the past several years, particularly in the areas of insider trading, financial fraud, and broker-dealer regulation, have greatly increased the agency's litigation caseload, and it is expected to continue growing. Commission lawyers represent the agency in appellate litigation and bankruptcy reorganizations, as well as in administrative proceedings. SEC lawyers also work with the Congress in developing an increasing number of legislative proposals. The Commission has requested 1990 appropriations sufficient to add seven staff positions in its office of General Counsel.

In its 1990 Budget Estimate, funding requested by the SEC would result in four fewer positions devoted to economic and statistical research. The Commission also has requested funding sufficient to add a small number of additional staff to assist in its administrative and executive functions.

Need for the Commission to devote special attention to emerging challenges facing the capital markets

Globalization of the markets.—In virtually every major SEC program area, from disclosure to market regulation, the Commission is faced with new and greater challenges as a result of the globalization of the securities markets. Title II of the legislation addresses the growing problems of international securities fraud, and the provisions of that title facilitate coordination by the SEC with foreign regulators on enforcement matters.

The Committee believes there are other areas where coordination on the international level is vital for the protection of U.S. investors and the integrity of the global capital markets. The Commission has begun efforts to coordinate or harmonize disclosure requirements with other countries and to reexamine U.S. disclosure requirements, in light of the distinct needs of investors and issuers in the global markets. The Committee would urge these efforts to continue, but would also warn against the dangers of a "competition in laxity" as regulators attempt to shape their laws to create regulatory climates most favorable for competition. The Committee believes that, in the long run, the most competitive markets are those that are sound, stable, and free from fraud.

In addition, the Committee urges the Commission to move forward in developing consistent and sound standards for institutions participating in the global securities markets. Efforts to bring about agreement on uniform capital standards for broker-dealers should be accelerated. The supervision of mutual funds, investment advisers and other participants in the global markets should be coordinated. Addressing possible weaknesses in the clearance and settlement systems that provide greater attention. The Committee urges the SEC to work with other domestic and foreign regulators to coordinate plans for crisis management, both at the domestic level and globally.

The Subcommittee on Securities held two days of hearings on the Globalization of the Securities Markets June 14th and 15th, 1989. At that hearing expert witnesses, as well as Subcommittee members, stressed the importance of strong and competitive markets and sound, well-capitalized market participants to the national economy, as well as to the national security. The Committee believes the emergence of a united European market, as well as the increasing strength of other foreign financial centers, requires that the Commission pay special attention to the strength and competitiveness of U.S. markets and institutions. In addition, the Committee believes there should be increased discussion and coordination among the SEC and other domestic financial regulators with respect to matters affecting the competitiveness of U.S. markets and financial institutions.

Institutionalization of the markets.—Another change in the market environment affecting Commission activity is the trend toward institutional ownership. The markets have changed dramatically since passage of the first securities law in 1933. The markets of the 1930s were characterized by many individual investors, with a relatively small percentage of shares held by large institutions. Today's markets are increasingly dominated by institutions. More than 60 percent of the 200 largest corporations in America have more than half of their shares owned by institutions, primarily pension funds and mutual funds. It is estimated that by the year 2000, pension funds may hold two-thirds of the equity capital of all U.S. corporations.

This trend has significant implications for SEC regulation and oversight over the markets, as well as for the way corporations are managed and governed. Individual investors continue to play a significant role in providing stability and liquidity in the market, and the confidence of individuals must be maintained. At the same time, institutional owners have become the nation's biggest source of capital. There is a continuing and unresolved debate over the role of institutional fiduciaries, investment managers, and beneficial owners in corporate governance. The Subcommittee on Securities has begun hearings on these issues. The Committee urges the Commission to give greater attention to this debate, as well as to questions concerning the continued role of individual investors in the market.

SEC budget authorization for 1990 and 1991

Section 102 of Title I would authorize appropriations for the SEC of $178,023,000 for fiscal year 1990 and $212,609,000 for fiscal year 1991. Although the Commission requested a three-year budget authorization, the Committee has determined that a two-year authorization is appropriate. The Committee believes that it should have continued involvement in overseeing the SEC's operations and be positioned to provide more timely response to issues that could impact on the Commission's resource needs. However, the Committee supports the funding levels requested by the Commission for fiscal years 1990 and 1991.

The Committee last considered the SEC's budget authorization in 1987 and passed a two-year authorization of $158.6 million for 1988 and $172.2 million for 1989, which became law. Congress appropriated $135.2 million for the SEC in 1988 and $142.6 million in 1989. Members of the Committee urged that greater amounts were needed to maintain an adequate level of market oversight and enforcement and believe the amounts appropriated in the past have been inadequate.

The starting point for the SEC's 1990 authorization is the President's budget request of $168.7 million, which would provide an increase in staff years from an estimated 2,131 for 1989 to 2,269 for 1990. As noted in the discussion above, these funds would provide additional staff in virtually every major program area.

The $178 million authorization requested by the Commission for 1990 and provided in Title I is approximately $10 million higher than the appropriations request, to anticipate possible additional staffing needs for bank and thrift securities activities, domestic and international law enforcement, leveraged buyout and takeover activities, investment adviser regulation, pay increases, and certain other demands on SEC resources. The legislation would authorize appropriations of $212.6 million for fiscal year 1991. This level of authorized funding would enable the Commission to meet additional demands on its resources as a result of new legislation and changes in the market environment.

For a number of years, funds appropriated for the SEC have been more than offset by fees collected by the agency. The Commission collects fees from corporations for the filing of documents, as well as transaction fees for shares traded on the stock exchanges. These fees are sent to the Treasury General Fund and are not retained by the agency. In 1988, the SEC collected $249 million in fees, while its appropriation amounted to only $135.2 million.

In addition, during 1987-1988, the SEC's enforcement efforts resulted in the payment of $63.7 million in civil penalties to the U.S. Treasury. This year, the SEC, working with the Justice Department, brought about the payment of $300 million in civil and criminal fines in its settlement with Drexel Burnham Lambert.

SEC authority to set compensation levels for its employees; direct leasing authority

Section 103 of Title I would address the SEC's problems in attracting and retaining qualified lawyers, accountants and other professionals, as well as support staff. In a study prepared by the Committee, the SEC noted: "The Commission is experiencing severe problems recruiting and retaining a sufficient number of staff for its major professional groups." Half of all attorneys leave the SEC within three years. The study suggests this problem has accelerated in recent years, as the disparity in pay widened between top securities firms and the SEC.

For example, while the SEC study reported that first year SEC lawyers in 1987 were paid $27,172, starting salaries in top New York firms were $71,000 and in top Washington firms $57,000 (and higher for Washington branches of New York firms). Currently, starting salaries at some major firms top $80,000 annually. With respect to accountants, the study compared SEC salaries with the private sector salaries paid to accountants leaving the SEC in 1988. At GS 11, the SEC salary of $27,716 was, on average, topped by a private sector salary of $40,000. For more experienced accountants, the gap was wider. A GM-15 SEC accountant who received $54,907 from the SEC, on leaving was paid an average of $90,000 in the private sector.

With passage of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA," Public Law 101-73), all federal financial institution regulators under the jurisdiction of the Banking Committee, except for the SEC, can set pay scales for their own employees. SEC officials have expressed concern that, unless they can pay competitive salaries, they not only will lose staff to the private sector, but to other financial regulators as well. Thus, Section 103 would give the SEC authority similar to the banking, thrift and credit union regulators to fix the compensation of SEC employees, without regard to the provisions of Title V of the U.S. Code, which governs the classification and pay rates of government employees. These provisions are essentially similar to those contained in FIRREA. The legislation would amend Section 4(b) of the Securities Exchange Act of 1934 to authorize the Commission to set and adjust rates of basic pay for employees without regard to the provisions of chapter 51 or subchapter 53 of Title Five. In addition, the legislation would relieve the Commission's Senior Executive Service employees from the pay scales set by subchapter VIII of Chapter 53, and would relieve the Commission's Merit Pay employees from the pay and award provisions in Chapter 54 of Title Five.

The SEC would also be given authority to lease and manage its own space, which is similar to authority held by certain other financial regulators. In an SEC staff report to the Committee, the SEC says it has experienced severe overcrowding as a result of GSA space limitations, and has encountered delays in leasing and pays more than other agencies that lease their own space. The Commission staff estimates that the agency would realize net savings of over $800,000 per year if it were able to lease and manage its own space.

In addition to these measures, the Committee urges the Commission to use its available resources to maintain and enhance a work environment conducive to longer-term tenures by professional staff. In particular, it is appropriate for the Commission to establish Commission-wide training and continuing education programs and provide the opportunity for the Commission staff to be exposed to the full range of Commission responsibilities.

TITLE II—INTERNATIONAL SECURITIES ENFORCEMENT COOPERATION ACT OF 1989

Background and need for the legislation

The Committee believes the SEC requires additional enforcement tools to appropriately address the problem of international securities fraud. In recent years, a growing number of Commission investigations have involved suspicious conduct, taking place in foreign countries, which has an impact on the U.S. securities markets. The increased incidence of fraudulent activity originating offshore is the direct result of the increasing globalization of the world's securities markets.

The volume of international securities trading has grown dramatically. Since 1980, foreign trading in U.S. stocks has grown more than 550 percent, and U.S. trading in foreign stocks increased more than 950 percent. Between 1980 and 1988, international and foreign bond issues increased from $38 billion to $227 billion. In 1986, a peak year, U.S. issuers raised $44 billion through international debt issues. While in 1980, U.S. corporations raised 12 percent of their public debt financing abroad, by 1986, that percentage had climbed to 22 percent. As noted in the Commission's 1987 report to the Committee entitled "Internationalization of the Securities Markets," as well as in hearings June 14 and 15, 1989 before the Securities Subcommittee, the movement toward global securities markets is accelerating.

The dramatic increase in foreign participation in U.S. markets has brought with it increased opportunities for securities fraud. The principle areas of concern to the SEC include insider trading, market manipulation, penny stock fraud and financial fraud. Although securities fraud may occur in the U.S., it may originate from abroad. Accordingly, information and evidence relating to suspicious conduct is often located beyond the jurisdictional reach of the SEC. In addition, many foreign countries have secrecy laws or blocking statutes that prohibit the disclosure of information. As a result, collecting information from abroad is a major challenge confronting the SEC resulting from the globalization of the securities markets.

Despite these barriers, the Commission has been able to make significant strides in addressing enforcement problems raised by the internationalized marketplace. For example, the Commission has successfully pursued several major fraud cases in which the U.S. securities laws were violated by persons operating from abroad or using foreign bank accounts, including, for example, *SEC* v. *Dennis Levine* and *SEC* v. *Stephen Wang and Fred Lee*.

Much of the progress in international enforcement cooperation has been the result of the negotiation of memoranda of understanding, or "MOU's," with foreign securities authorities. Among other things, these bilateral agreements provide for mutual investigative assistance. The Commission has entered into MOUs with authorities in Switzerland, the United Kingdom, Japan, three Canadian provinces, and Brazil.[1] These MOUs are important tools in international enforcement, and the Committee understands that the Commission will enter into additional MOUs with other countries. The Committee believes that the timely development of additional bilateral MOUs should be continued, but also urges the Commission to vigorously pursue multilateral solutions to the enforcement problems raised by increasing globalization. In particular, the Commission should pursue the opportunities for multilateral cooperation presented by the European Community's plans for a single market, and established multilateral fora such as the International Organization of Securities Commissions.

The Commission has informed the Committee that it has been unable to reach agreement on MOUs with certain foreign authorities because of conflicts between the confidentiality requirements of foreign nondisclosure laws and the Freedom of Information Act ("FOIA"). Some foreign laws require that documents provided to the foreign authorities must, under certain circumstances, be kept confidential unless disclosure is necessary or required in the course of an investigation or enforcement action. The Commission, of course, must comply with the FOIA and other laws which may preclude withholding documents provided by foreign authorities from the public.

Section 202 of this Title would eliminate this potential conflict by amending Section 24 of the Securities Exchange Act of 1934 ("Exchange Act") to enable the Commission to maintain the confidentiality of certain evidence received from foreign securities authorities. This provision is crucial to the Commission's ability to negotiate additional MOUs. In order to facilitate the cooperation of foreign authorities in providing the Commission with investigative assistance, the Committee believes that documents furnished to the Commission should be exempt from disclosure if the foreign authority represents to the Commission that it has made a good faith determination that the disclosure of the documents would violate the confidentiality requirements of its country's laws. Section 202 also would make explicit the Commission's rulemaking authority to provide documents and other information to foreign authorities as well as to domestic authorities. Clarification of this authority will assist in the Commission's efforts to cooperate with both foreign and domestic securities and law enforcement officials.

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[1] The Commissions also can obtain investigative assistance from certain countries through mutual legal assistance treaties, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, opened for signature March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, and by informal agreements.

Sections 203 through 206 would amend the Exchange Act, the Investment Advisers Act of 1940, and the Investment Company Act of 1940 to permit the Commission, after an opportunity for a hearing, to exercise discretionary authority to utilize the findings of a foreign court or foreign securities authority in order to censure, revoke the registration of, or impose employment restrictions upon securities professionals registered to do business in the United States. The Commission already has such authority with respect to illegal or improper activity in the United States under these acts. Certain provisions of the federal securities laws also have been used to support the imposition of limitations on activities of securities professionals based upon the findings of a foreign court as to illegal activity abroad.

In view of the rapid internationalization of the markets and the Commission's new authority to investigate on behalf of foreign securities authorities under Section 21(a)(2) of the Exchange Act,[2] the Committee believes it would be appropriate to make explicit, and to add to, the Commission's existing authority the discretionary ability to utilize the findings of a foreign court or securities authority to sanction securities professionals in the United States. It would be ironic and inconsistent with the Commission's mandate to protect investors if the Commission were to provide assistance leading to a finding that a securities professional had violated foreign securities laws substantially similar to U.S. laws, but could not prevent that securities professional from conducting business in the U.S. securities markets. The provisions of Sections 203 through 206 would protect against such a result.

Section 203(b) of this Title would expand the class of persons subject to "statutory disqualification" pursuant to section 3(a)(39) of the Exchange Act. The amendment would add "any other felony" to the list of crimes that subject a person to the statutory disqualification and the associated review process. It would effectively authorize the Commission or a self-regulatory organization ("SRO") under its jurisdiction to prohibit a person who has been convicted of a felony from becoming a member of the SRO or associating with a member, or to place conditions upon his membership or association. This provision would not necessarily exlcude a convicted felon from the securities business, but would permit the Commission and SROs to consider whether a particular felony conviction warrants exclusion or appropriate limitations.

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[2] Section 21(a)(2) of the Exchange Act was originally proposed by the Commission in 1988 in conjunction with three of the proposals that are included in Title II. It was enacted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677.

Finally, in certain cases, foreign securities authorities have expressed a willingness to reimburse the Commission for travel, subsistence and other necessary expenses incurred by the Commission and its employees in carrying out investigations for the foreign authority pursuant to Section 21(a)(2) of the Exchange Act or in providing other assistance. However, federal appropriations law prohibits federal agencies from accepting funds from outside sources absent specific statutory authority allowing them to do so. Section 207 would amend Section 4 of the Exchange Act to permit the Commission to accept reimbursement.

The Committee also notes that similar legislation considered by the Committee in the last Congress was supported by the Department of State and the Department of Justice.

A. Authorization for the Commission to assure confidential treatment of certain information provided to the Commission by foreign securities authorities

This Title would amend the securities laws to permit the Commission to assure confidential treatment for records provided to the Commission by foreign securities authorities. The Commission currently cannot provide such assurances of confidentiality because of its disclosure obligations under the FOIA and civil discovery rules. The legislation would permit the Commission to withhold from disclosure documents furnished to the Commission that might otherwise be required to be disclosed by the FOIA or under a third-party subpoena, if the foreign authority represents that is has made a good faith determination that the disclosure of such documents would be contrary to its country's laws. The Commission would, however, still be obligated to disclose such documents to Congress. The documents would also be subject to discovery requests in any enforecement action brought by the United States or the Commission, absent a separate basis upon which to withhold them.

In entering into MOUs with the SEC, authorities in foreign countries have committed themselves to obtaining and providing the Commission with documents, some of which otherwise would be required to be kept confidential under the foreign country's laws. While these authorities have determined that it is appropriate to permit public use of these documents, which otherwise must be kept confidential, when the Commission prosecutes securities law violators, they have expressed concern about the disclosure of such documents when the Commission decides not to prosecute a particular matter.

Due to the disclosure provisions of the FOIA, the Commission cannot assure foreign authorities that the confidentiality of any documents furnished to the Commission will be maintained. The Commission's disclosure obligations under the FOIA are the same for records obtained from foreign securities authorities as they are for records obtained from other sources, i.e., the documents must be disclosed under the FOIA unless they fall within a specified FOIA exemption. In addition, a third party subpoena served on the Commission may necessitate disclosure unless a legal privilege or other defense is available. Because of these disclosure obligations, foreign securities authorities have expressed concerns about providing the Commission with information relevant to ongoing investigations. They have also stated that their own domestic laws preclude them from entering into agreements with the Commission unless the Commission is able to fulfill the confidentiality requirements of the foreign country's laws.

This Title would create a narrow exemption from the FOIA for foreign-obtained documents that, under the applicable foreign law, are required to be kept confidential. The Committee believes that principles of comity make it appropriate to exempt from disclosure confidential documents obtained from a foreign government if those documents could not be disclosed under the laws of that foreign government. Moreover, adoption of such an amendment will almost certainly allow the SEC to obtain otherwise unobtainable confidential documents from foreign countries for enforcement purposes.

The exemption is not unlimited, however. Section 24(d) would supersede the FOIA [3] by authorizing the Commission to withhold from disclosure documents obtained from a foreign securities authority only if such authority represents that it has made a good faith determination that public disclosure of the documents provided would violate the laws of the foreign country. The requirement that the foreign securities authority represent a "good faith determination" allows the Commission to consider the legitimacy of the foreign authorities non-disclosure request. In addition, the relevant documents must have been obtained by the Commission pursuant to authorized SEC procedures or a memorandum of understanding.

The term "foreign securities authority" includes government agencies and self-regulatory organizations which "administer" or "enforce" the securities laws. The bill would not restrict the Commission's use of the information and documents obtained from a foreign authority. Nor would it limit the ability of the Congress to obtain information in the Commission's possession or preclude defendants in actions commenced by the United States or the Commission from seeking, through discovery or otherwise, such documents as appropriate. The legislation would add a new Section 24(e) to make clear that the amendment would not enable the Commission to withhold information from the Congress or from complying with an order of a court of the United States in an action commenced by the United States or the Commission. While the Committee is sensitive to the desire of foreign authorities to maintain confidentiality of information, Congress' oversight responsibilities require that the Commission shall have an affirmative obligation to comply with any request for information from the Congress.

B. Authorization for Commission rulemaking authority to permit access to its files by persons, both domestic and foreign, engaged in securities law enforcement and oversight

The SEC has adopted rules which permit access to non-public materials in the Commission's investigative files to domestic and foreign governmental authorities, self-regulatory organizations, and other specified persons. The Commission also has rules which authorize designated members of the Commission staff to "engage in discussions" concerning the nonpublic materials with the persons specified in Rule 30-4(a)(7). These rules have frequently provided the basis for making otherwise nonpublic material available for prosecutions of securities law violations by other enforcement agencies and SROs.

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[3] Certain statutes have been found to preempt or supersede the FOIA. See e.g., *Ricchio* v. *Kline*, 773 F.2d 1389, 1392 (D.C. Cir. 1985) (holding that the FOIA was preempted by the Presidential Recordings and Materials Preservation Act, the sole purpose of which is "to preserve" and "to provide access to" a certain specific body of records). By superseding the FOIA, the Commission would not have to rely on a specified FOIA exemption in order to withhold confidential information from disclosure.

Notwithstanding the Commission's long-standing access rules, Section 24(b) of the Exchange Act, 15 U.S.C. 78x(b), enacted in 1975, by its express terms makes it unlawful "for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice or other document filed with or otherwise obtained by the Commission, (a) in contravention of the rules and regulations of the Commission under [the FOIA], or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment of information." Section 24(b) was intended to make all requests for confidential treatment of information subject to the FOIA rules. There is nothing in the legislative history suggesting that Congress intended to restrict the Commission's authority to provide information to other authorities. In most situations, the Commission receives an access request before the staff makes a determination to accord confidential treatment to the relevant information, so that Section 24(b) is not at issue. Nevertheless, the literal language of Section 24(b) can pose an obstacle to compliance with an access request.

In addition, Section 210(b) of the Investment Advisors Act bars the staff from making public information relating to a Commission investigation if it was obtained pursuant to the Act, unless the Commission expressly authorizes such disclosure (with an exception for public hearings and disclosure to Congress). Section 45(a) of the Investment Company Act imposes a bar on the disclosure of nonpublic documents obtained by the Commission pursuant to the Act, except insofar as disclosure is made to federal or state government officials.

In order to remove any statutory obstacles, and to make clear the Commission's authority to grant access to its files to domestic and foreign authorities, the legislation would provide the Commission with explicit authority in this area. The legislation would amend Section 24 of the Exchange Act by adding subsection (c) to grant the Commission rulemaking authority so as to provide the SEC with the flexibility to adjust its regulations governing access requests in the future. In addition, by specifying that the Commission may provide access to foreign persons, the Commission's authority as to this matter will be made explicit. The provision as to confidentiality of records is intended to ensure that the Commission will not provide records to persons who will make the records public for purposes other than those stated in an access request.

C. Imposition of sanctions on securities professionals for misconduct abroad

One likely result of efforts by foreign securities authorities to strengthen their securities law enforcement will be an increase in the number of enforcement or disciplinary proceedings brought against securities professionals, such as brokers, dealers, and investment advisers who do business abroad, as well as in the U.S. Indeed, such action may result at least in part from the assistance provided to foreign authorities by the Commission pursuant to recently enacted Section 21(a)(2) of the Exchange Act. The SEC, however, currently does not have explicit authority to impose administrative sanctions against such professionals based upon foreign findings of their illegal or improper foreign activities (although, as discussed below, the Commission has some authority in this area).

The Committee believes that, as the securities markets become increasingly internationalized, the SEC should have such authority. This Title therefore provides that the Commission may, in its discretion, and after an opportunity for a hearing, impose sanctions on securities professionals who have been found to have engaged in misconduct abroad when, had the same misconduct taken place in the United States, the professional would have been subject to a Commission disciplinary proceeding. It is important to note that the Commission would have discretion to bring an administrative proceeding based on foreign misconduct, just as it has discretion to bring such actions based on domestic misconduct. Sections 203 through 206 of this Title would amend Section 15(b) (4) and 3(a)(39) of the Exchange Act; Section 9(b) of the Investment Company Act; and Section 203(e) of the Investment Advisers Act to provide the Commission with this express authority.

U.S. broker-dealers, investment advisers, and investment companies have increased significantly their activities in foreign markets. The activities of foreign professionals in the U.S. markets also are likely to increase. As a result, the SEC is likely to confront a growing number of securities professionals, who have been disciplined abroad for illegal or improper activities, working or seeking to work in this country.

The Commission currently has substantial authority to curtail the securities activities of certain convicted criminals and other wrongdoers who engaged in illegal or improper conduct in this country. Under Section 15(b)(4) and (b)(6) of the Exchange Act, the Commission may censure, limit the activities, functions, or operations of, suspend for up to twelve months, or revoke the registration of any broker or dealer, or bar from association with a broker or dealer, any person: found to have violated the federal securities laws, rules, or regulations thereunder; convicted of a "felony or misdemeanor" within the preceding ten years involving specified crimes; who willfully has filed a false or misleading statement in any registration statement or report filed with the Commission; or who has willfully aided and abetted a violation of any portion of the federal securities or commodities laws. Such a person also is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. Section 15B(c) (2) and (4), 15C(1) (A) and (C), and 17A(c) (3) and (4) of the Exchange Act make reference to Sections

15(b) (4) and (6) and thus permit similar disciplinary action to be taken against municipal securities dealers, government securities brokers and dealers, and transfer agents, as well as associated persons of each. Subsections 203 (e) and (f) of the Investment Advisers Act provide the Commission with disciplinary authority as to investment advisers and persons associated with registered investment advisers, similar to that in Section 15(b) (4) and (6) of the Exchange Act.

In addition, Section 9(a) of the Investment Company Act generally prohibits a person convicted of a securities-related crime or subject to a securities-related injunction from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company, or principal underwriter for any registered open-end company, unit investment trust, or face-amount certificate company. The automatic statutory disqualification in Section 9(a) is supplemented by the Commission's authority under Section 9(b). Under Section 9(b), the Commission may prohibit a person from serving in any of the capacities cited in Section 9(a) or as an affiliated person of a registered investment company's investment adviser, depositor, or principal underwriter if the person willfully has caused a false or misleading statement to be made in any registration statement or report filed with the Commission or if the person has willfully violated or aided and abetted a violation of any provision of the federal securities or commodities laws.

Although the foregoing provisions do not mention the Commission's authority to impose sanctions based on foreign misconduct, certain of the provisions can be so applied. In particular, Sections 15(b)(4)(B) of the Exchange Act, 203(e)(2) of the Investment Advisers Act, and 9(a)(1) of the Investment Company Act refer to a "felony or misdemeanor" conviction for specified crimes; neither the statutes nor their legislative histories specify that the crime or conviction must take place in the United States. Thus, pursuant to Section 15(b)(4)(B), the Commission revoked the U.S. registration of a Canadian broker-dealer who was convicted of crimes in Canada involving the purchases or sale of securities. Likewise, under Sections 15(b)(4)(C) of the Exchange Act and 203(e)(3) of the Investment Advisers Act, the Commission may impose sanctions based upon a securities-related injunction entered by a "court of competent jurisdiction," and under Section 9(a)(2) of the Investment Company Act, such as enjoined person's association with a registered investment company is limited. These statutes are not explicitly limited to injunctions entered by U.S. courts.

As to other provisions, however, the Committee believes that such authority needs to be clarified or expanded. First, the Commission's authority to impose sanctions on a professional and to restrict association with a registered investment company for a misstatement in an application for registration or report filed with the Commission does not extend to misstatements made to foreign regulatory authorities. Second, the Commission's authority to impose sanctions on the professional or to restrict association with a registered investment company for willful violation of the U.S. securities and commodities laws does not extend to violations of foreign securities laws. Finally, the Commission's authority to impose sanctions on professionals for aiding and abetting a violation or failing reasonably to supervise a person subject to the professional's control in violation of the U.S. securities laws and to restrict association with a registered investment company of personnel who are found to have aided and abetted such violations does not extend to activities that violate foreign securities and commodities laws. The legislation would provide the Commission with authority to act in each of these circumstances.

In addition, as to the provisions under which, as discussed above, the Commission has authority to impose sanctions, the legislation would make such authority explicit and would preclude certain challenges which might be possible under the existing statutes. In particular, Section 15(b)(4)(B) of the Exchange Act, Section 203(e)(2) of the Investment Advisers Act, and Section 9(a)(1) of the Investment Company Act refer to convictions for a "felony or misdemeanor" as the basis for a Commission sanction. A securities professional who was convicted in a country that does not define crimes as "felonies" or "misdemeanors" might challenge the Commission's authority under these sections. A Commission administrative sanction also could be challenged when the foreign offense for which the securities professional was convicted is not one of the exact offenses specifically covered bya the statutory provisions. As discussed below, the proposed legislation would undercut such defenses by providing for Commission sanctions based upon foreign convictions for crimes "substantially equivalent" to those listed in the statute. The legislation also would foreclose the potential argument that the statutory provisions that allow the Commission to impose sanctions on professionals who have been enjoined from acting in specific capacities, such as underwriters or investment advisers, do not apply to persons whose profession is not so defined in a foreign country. The proposed amendments would resolve the potential difficulties posed by differences in employment terms by permitting sanctions based upon an injunction entered against a professional who performs a "substantially equivalent" function to the activities currently listed in the statute.

The Commission's action against a securities professional would not be automatic. The statutory procedure for imposing sanctions for foreign misconduct would be the same as that currently in place for imposing sanctions for domestic misconduct. The Commission would provide the securities professional with notice and an opportunity for a hearing prior to taking such action. The securities professional thus would have an opportunity to present evidence on his own behalf, in order to demonstrate that the imposition of sanctions would not be in the public interest. In addition, if the professional makes a persuasive due process or jurisdictional attack on the foreign adjudicative proceedings, the Commission may be required to permit relitigation of the underlying offense. In such a case, the foreign finding of misconduct would provide the basis for a Commission administrative proceeding even though principles of collateral estoppel might not be available to the Commission.

In addition, the legislation would amend newly redesignated subparagraph (F) of Section 3(a)(39) of the Exchange Act, which by cross reference to Section 15(b)(4) of that Act makes persons convicted of specified felonies and misdemeanors subject to statutory disqualification, by adding "any other felony" to the crimes listed as possible bases for denial of SRO membership or participation or association with an SRO member. This provision would permit the Commission and the SROs to scrutinize persons who have been convicted of crimes that are not currently specified. This provision would not necessarily exclude every convicted felon from the securities business. It addresses the need to permit the regulatory scrutiny of felony convictions, such a drug trafficking, theft or property, and violent crimes, and would permit the SROs and the Commission to prohibit a person who has been convicted of a felony from becoming a member or participant of an SRO or associating with a member or participant, or to impose appropriate safeguards to protect the markets and investors from unreasonable risks. SRO examination staff could oversee the activities of those persons convicted of felonies who are permitted to work in the securities business, just as they currently can for other persons subject to statutory disqualification. This would make it possible to learn whether any conditions imposed were being adhered to, or whether the person was complying with the federal securities laws.

This amendment would respond to concerns brought to the Commission's attention by the National Association of Securities Dealers ("NASD"). The National Business Conduct Committee of the NASD, which is responsible for all NASD disciplinary actions, has endorsed this provision of the proposed legislation as a desirable means of improving ethics in the securities industry. Of particular concern to the NASD was the recent association of a convicted drug dealer with an NSAD member firm in a principal capacity. The Committee expects that the national securities exchanges also will find it appropriate to review the qualifications of persons seeking membership or association who have been convicted of felonies.

Title II would also add sanctions based upon foreign convictions or disciplinary action by a foreign financial regulatory authority to the list of offenses included within the definition of a person subject to a "statutory disqualification" in Section 3(a)(39) of the Exchange Act. The amendment would effectively permit the Commission or an SRO to prohibit a person subject to the foreign sanction from becoming a member or participant of the SRO or associating with a member or participant, or to place conditions upon his membership, participation or association.

New subsections 15(b)(4)(G) of the Exchange Act, 203(e)(7) to the Investment Advisers Act, and 9(b)(4) to the Investment Company Act would apply the proscriptions of Section 15(b)(4) (A), (D), and (E) of the Exchange Act, Section 203(e) (1), (4), and (5) of the Investment Advisers Act, and Section 9(b)(1)-(3) of the Investment Company Act to an international context. Thus, the Commission would be able to impose sanctions on the professional if he has been found by a "foreign financial regulatory authority" (a defined term in the Acts) to have made false or misleading statements in registration statements or reports filed with a foreign securities authority; violated foreign statutory or regulatory provisions regarding securities or commodities transactions; or aided, abetted, or otherwise caused another person's violation of such foreign securities or commodities provisions or failed to supervise a person who has committed a violation of such provisions. The term "foreign financial regulatory authority" would be defined in new Sections 3(a)(51) of the Exchange Act, 202(a)(24) of the Investment Advisers Act, and 2(a)(50) of the Investment Company Act. It would include a "foreign securities authority," which is defined in Section 3(a)(50) of the Exchange Act, or an organization that is essentially equivalent to a SRO. The term would also be defined under this legislation in Section 202(a)(23) of the Advisers Act and Section 2(a)(49) of the Investment Company Act, as it is defined in Section 3(a)(50) of the Exchange Act; as "any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws relating to securities."

Subsection 15(b)(4)(G), 203(e)(7), and 9(b)(4) are substantially similar to the aforementioned subsections of 15(b)(4), 203(e), and 9(b). The most significant difference between the existing and the new provisions is that the legislation would not require that the foreign authorities find "willful" misconduct, i.e., "willful" false filing, a "willful" statutory violation, or "willful" secondary liability. The Committee believes that this change is appropriate because of a potential disparity of willfulness in different countries and because some countries may not require a "willful" violation. The proposed language would provide the Commission with flexibility in deciding whether the facts of a particular case indicate a state of mind comparable to willfulness so as to warrant imposition of sanctions.

In addition, Section 15(b)(4)(B) of the Exchange Act and Section 203(e)(2) of the Investment Advisers Act would be amended to grant the Commission explicit authority to consider convictions by a foreign court of competent jurisdiction of any crime enumerated in current Section 15(b)(4)(B) and Section 203(e)(2) or a "substantially equivalent" foreign crime. Section 15(b)(4)(C) of the Exchange Act and Section 203(e)(3) of the Investment Advisers Act would be amended to state explicitly that the Commission may consider injunctions imposed by a foreign court of competent jurisdiction in connection with any of the activities designated in the statute, or a "substantially equivalent" foreign activity. The Commission would have authority to restrict association with a registered investment company based on the same factors in new subsection 9(b) (5) and (6).

It should be noted that this Title would not amend Section 9(a) of the Investment Company Act, which prohibits assocation in certain capacities with a registered investment company by persons who have been convicted of certain offenses or who have been subject to specified injunctions. Section 9(a) is a self-policing mechanism, the purpose of which "is to prevent persons with unsavory records from occupying these positions where they have so much power and where faithfulness to the fiduciary obligations is so important."[4] The automatic disqualification provisions of Section 9(a), coupled with the Commission's exemptive authority under Section 9(c) to avoid any inequitable results, are indispensable means of safeguarding the integrity of registered investment companies. However, due process concerns may be presented by legislation that would automatically bar a person solely on the basis of a foreign finding of a violation of foreign law, without any prior notice or opportunity for hearing by a U.S. court or administrative agency. These concerns are avoided if the Commission determines, on a case-by-case basis, whether the foreign finding justifies a bar, rather than relying exclusively on a foreign finding of a violation of foreign law. The amendment would not create any competitive disparities because, just as Section 9(a) applies equally to U.S. and foreign persons that have been convicted or enjoined in a manner specified in the statute, amended Section 9(b) would grant the Commission authority to institute an administrative proceeding against either a U.S. or foreign person that has committed an equivalent foreign violation and has been sanctioned by a foreign authority.

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[4] Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking Currency, 76th Cong., 3d Sess. 46 (1940).

D. Reimbursement of expenses incurred by the Commission in assisting foreign securities authorities

Federal appropriations law prohibits federal agencies from accepting funds from outside sources absent specific statutory authority. Accordingly, Section 207 of this Title would amend Section 4 of the Exchange Act to permit the Commission to accept reimbursement from a foreign securities authority or on behalf of such authority, for travel, court reporters, subsistence, and other expenses incurred by the Commission, its members, and employees in carrying out investigations for the foreign authority pursuant to Section 21(a)(2) of the Exchange Act or in providing other assistance. Foreign authorities have, in certain cases, agreed to reimburse the Commission for such expenses. Indeed, the Commission has already incurred significant travel expenses in providing assistance to foreign securities authorities. The Committee recognizes that the Commission expects to seek reimbursement only for its out-of-pocket expenses incurred in providing assistance to foreign securities authorities.

TITLE III—THE SHAREHOLDER COMMUNICATIONS IMPROVEMENT ACT OF 1989

Title III of the legislation is part of continuing efforts by the Commission and the Congress to improve communication between beneficial security holders and registrants of securities when securities are held in nominee name. These efforts included the establishment of the Commission's Advisory Committee on Shareholder Communications ("Advisory Committee") in 1981, and continued with adoption of rules by the Commission designed to facilitate communications between persons soliciting proxies and the beneficial owners of securities held by brokers in nominee name.

Prior to the adoption of these new requirements, broker-dealers holding securities in nominee name were required to promptly give registrants an estimate of the number of sets of proxy materials needed for the beneficial owners of securities, and, upon receipt of the requested sets of material from the registrant, to forward the material promptly to customers. However, the proxy rules did not provide a means by which registrants could communicate directly with the beneficial owners of their securities if held in nominee name. In 1983, the Commission amended Rule 14b-1 to tighten the timetable for proxy dissemination and establish a means by which a registrant could communicate directly with security holders whose securities were registered in the name of a broker-dealer nominee.

Subsequently, Congress enacted the Shareholder Communications Act of 1985, which authorized the Commission to similarly regulate the proxy processing activities of banks. The Commission adopted rule 14b–2 to set forth banks' obligations in connection with proxy processing activities and direct communication between beneficial owners and registrants.

Despite these improvements in shareholder communications, three deficiencies in the statutory scheme have been identified. First, Section 14(b) of the Exchange Act requires banks and brokers who hold shares in nominee name to deliver proxy material and other communications to the beneficial owners. However, it does not require delivery if the bank or broker nominee is holding investment company securities. Approximately 30 million Americans own securities of investment companies, and currently, about ten percent of these securities are held by broker and bank nominees. Thus, a significant number of shareholders do not have the benefit of the Commission's shareholder communications rules. Second, the current statutory scheme regulates only the processing of proxies, not information statements, when securities are held by nominees. Third, while non-investment companies are currently required to deliver information statements to securities holders of record, investment companies are not. These deficiencies are addressed in the legislation.

The legislation contains two amendments to section 14(b) of the Exchange Act. First, the legislation would extend to investment company security holders the benefits of the shareholder communication rules which require brokers and banks holding securities as nominees to provide proxies to beneficial security holders and to provide registrants, upon request, with the names of beneficial owners, so that registrants could send annual reports and voluntary communications directly to the beneficial security holders. Absent this legislation, Section 14(b) and the rules adopted thereunder only apply with respect to securities registered under Section 12 of the Exchange Act, which would not apply to most investment company securities. Thus, the legislation would recognize the changes that have occurred in the form of ownership of investment company securities and would facilitate communication between investment companies and beneficial owners of investment company securities.

Bank and broker nominees would be entitled to recoup start-up and other costs associated with their proxy delivery and other obligations under Section 14(b) of the Exchange Act with respect to investment company securities. Bank and broker nominees could look to the rules of the self-regulatory organizations to determine the reasonableness of their start-up and other costs. Bank and broker nominees which incur greater expenses could seek additional reimbursement, subject to the "reasonable expenses" limitation in Rule 14b–2(f).

Second, the legislation would amend Section 14(b) to require broker and bank nominees to transmit information statements to the beneficial owners of securities. Currently, only proxies are required to be delivered to beneficial owners of securities when securities are held in nominee name. The amendment of Section 14(b) would assure that beneficial owners of securities held in nominee name receive information statements as well as proxies.

Third, the legislation would amend Section 14(c) of the Exchange Act to include investment companies among the registrants required to transmit information statements to security holders of record. Previously, Section 14(c) required the issuance of information statements only with respect to securities registered under Section 12 of the Exchange Act. Like the amendments to Section 14(b), this amendment would facilitate communication between security holders and issuers and would provide investment company security holders the same benefits of improved communications as are provided to non-investment company security holders.

The bill would provide for an effective date one hundred and eighty days after the date of enactment. This would permit nominees to integrate investment company security holders into their established proxy delivery and communication systems, broker and bank nominees to extend existing proxy delivery systems to include information statements, and investment companies to extend established communication systems for proxy delivery to include information statements.

TITLE IV—TRUST INDENTURE REFORM ACT OF 1939

Background and need for the legislation

The Trust Indenture Act of 1939 ("TIA" or "Act") regulates the public issuance of debt securities and the relationships among debt security holders, indenture trustees and the issuers of the debt securities ("obligors"). The TIA requires the filing with the SEC of certain indentures, i.e., contracts governing the obligations of an issuer of debt securities to the security holders and setting forth the duties of the indenture trustee to act on behalf of the security holders. The Act was first made law in response to the recommendation of the Securities and Exchange Commission in its "Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees" of 1936 ("1936 Report"). Part VI of the Report described contractual provisions and business practices that had resulted in the defrauding and exploitation of the public holders of debt securities.

Responding to this need for investor protection, the TIA has for fifty years protected the public from injuries that may be caused by irresponsible indenture trustees or oppressive indenture terms. Although the TIA does not receive a great deal of attention, its importance can easily be seen. In 1988 alone, indentures covering more than $200 billion in principal amount of debt securities were qualified under the Act.

The principal purpose of Title IV is to modernize the TIA. In the fifty years since its enactment, the Act has not been amended in any important respect. During this period, however, the public market for debt securities has undergone significant changes. Innovations in the forms of debt instruments have produced securities, such as collateralized mortgage obligations, with were not contemplated in 1939. Technological developments and regulatory changes have resulted in new distribution methods including shelf offerings, direct placements and "dutch" auctions. In addition, public securities markets have been profoundly changed by the increasing internationalization of the securities markets. Thus, current market practices conflict with many of the assumptions underlying the Act, which were based on financial customs prevailing in 1939. Unfortunately, the TIA has proven recently to be inflexible in many important respects. Therefore, legislation is needed to better conform the law with current market developments and practices.

In addition, legislation is necessary to streamline the Act's qualification procedures. The present procedures for qualification of indentures under the Act require, in part, that the indenture to be qualified must recite mandatory terms in the body of the indenture. These mandatory terms secure critical rights for public investors. Currently, although the TIA requires the inclusion of such terms in the body of the indenture, there is no procedural mechanism for enforcing absent terms. Because the mandatory terms must be recited within the indenture, review by the Commission's staff is necessary to ensure that those terms have been properly included and thus provide the intended protection to the public. Because of limited resources available to the Commission, full review of all indentures is not possible. In 1988, 54.5 percent of all indentures were qualified without review by the Commission's staff. The legislation would make the terms now required to be recited within a qualified indenture to be applicable as a matter of law. Thus, in addition to removing a significant administrative burden from the Commission, the legislation would substantially strengthen investor protection by implementing the required provisions without regard to the text of the indenture. Ancillary benefits of this self-executing technique would include the reduction of legal and printing costs attendant to the requirement of recitation.

Enactment of Title IV would conform the Act to the present realities of the market and make it adaptable to future developments, while easing the administration of the Act. The procedures for qualification of indentures under the Act would at once be simplified and strengthened. Broad exemptive authority would be granted to the SEC to provide flexibility in administration and adaptability to future developments. To remove unnecessary restrictions on an indenture trustee's legitimate business activities, the determination of conflicts of interest disqualifying a trustee from service would be made at the time of a default under the indenture. Trusteeships by foreign persons would be conditionally permitted to encourage continued internationalization of securities markets. Finally, this Title would effect a number of technical changes to the Act.

A. Qualification procedures

Qualification of indentures under the Act is normally accomplished in coordination with registration of public offerings of debt securities under the Securities Act of 1933. The Act requires the filing of an indenture, the contract governing relations among security holders, the trustee and the obligor, that recites the terms required to be included by sections 310 to 317 of the Act. The mandatory indenture terms provide for the appointment of an independent and qualified institutional trustee; fix preferential collection rights in favor of indenture security holders; establish means for communication among security holders; require reports to security holders from the obligor and the trustee; prescribe a high standard of care for the trustee; protect security holders' rights to payment of principal and interest; and confer legal standing on the trustee to enforce indenture provisions. Section 318 of the Act nullifies indenture terms that are inconsistent with the required provisions.

This Title would convert the mandatory contractual terms in the Act to direct statutory commands and impose those terms on any indenture qualified under the Act. In other words, the Act's mandatory terms would govern the rights and duties under a qualified indenture both as provisions of positive law and as provisions of the indenture contract. Automatic imposition of the Act's mandatory terms would simplify compliance with qualification procedures and their administration and would also end the necessity for the staff of the Commission to review indentures for conformity to the Act's terms. Similarly, the legislation's new method for determining trustee conflicts of interest only after a default under the indenture, discussed below, would dispense with any need for a finding that the trustee is free from conflict, since no default, which would be a condition to a finding of conflict, could occur before any indenture securities are outstanding.

The qualification technique proposed would have a greater substantive significance. With the Act's requirement imposed by operation of law, there would be absolute assurance that every qualified indenture would strictly comply with the provisions of sections 310 to 317. A qualified indenture omitting required terms or including inconsistent provisions would automatically be brought into conformity with the Act. Thus, enactment of Title IV would strengthen the investor protection conferred by the Act. In addition, a modification to section 322, the Act's jurisdictional provision, would codify the holdings of *Zeffiro* v. *First Pennsylvania Banking and Trust Co.,* 623 F. 2d 290 (3rd Cir. 1980), and *Morris* v. *Cantor,* 390 F.Supp. 817 (S.D.N.Y. 1975), finding private rights of action for enforcement of mandatory indenture terms.

Other changes to the qualification process would accommodate the Act's procedures to delayed offerings ("shelf offerings") permitted by rule 415 under the Securities Act. Under this rule, eligible issuers may register the delayed offering of debt securities in an amount the issuer reasonably believes will be sold within two years. Many terms of debt securitis in such an offering will not be determined until the later sale of a portion of the securities included in the registration statement. However, under present law, all procedures related to qualification of an indenture in a registered offering can only take place at the time the registration statement becomes effective. By permitting revised procedures for compliance with the Act in delayed offerings, this Title would reconcile the Act with adminstrative practices under the Securities Act. The new procedures would provide for greater flexibility by requiring the filing of an indenture at the time of effectiveness, but allowing the obligor to delay the naming of a trustee until the securities are sold to the public, when compliance with the Act's requirements becomes critical. The procedure also would be useful for offerings of pay-in-kind securities, under which dividends or interest may be paid, at the issuer's election, in debt securities. In these cases, the possibility exists that no additional securities will be issued at any time.

B. Exemptive authority

Title IV would expand the Commission's exemptive authority under the Act. Present law confines the Commission's exemptive authority to indentures with securities outstanding on January 1, 1959, and to securities of small business investment companies. The narrowness of these categories limits the usefulness of the Commission's exemptive authority. Based on a parallel provision of the Investment Company Act of 1940, the exemptive authority proposed by the legislation would permit conditional or unconditional exemption for any persons, registration statements, securities or transactions on findings that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

Changes in the types of debt securities, in the methods of public financing, and in the character of relations between obligors and their financial intermediaries have created situations not contemplated in 1939. As an example, in the case of asset-backed financings, where debt instruments are secured by receivables or by fungible securities, the complex procedures required for valuation of released, substituted or added collateral, which assume fixed assets as security, are impracticable and do not serve the Act's own purposes. General exemptive authority would permit the Commission to adapt the Act to developing market conditions and financing techniques. Such authority could have been used to accommodate shelf offerings.

C. Conflicts of interest

Title IV would make significant changes to the Act's method for determining conflict of interest. In the Act's present form, the existence of any of the nine relationships described in section 310(b) at any time indenture securities are outstanding requires the trustee either to remove the conflict or to resign within 90 days. This requirement is an outgrowth of the 1936 Report and reflected Congress' concern about instances of abuses involving relationship between the obligor and the trustee. However, each of the instances of abuse cited in the 1936 Report arose in situations in which there had been a default on the bonds. In the cases described in the Report, the trustees took steps to protect their own financial interests, instead of protecting the interests of the bondholders. There is no indication in the legislation history of the TIA that Congress was concerned about abuses by trustees prior to a default. In its memorandum in support of the legislation, the Commission has stated that, in the absence of default, the indenture trustee's duties are essentially ministerial, consisting largely of maintaining security holders' lists and transmitting interest payments to holders. The Commission has said that prior to default, there is no incentive for a trustee, even one with a technical conflict of interest, to withhold these services. Furthermore, there is no historical evidence showing a trustee in dereliction of its duties in the absence of default.

At the time of default, however, the character of the trustee's duties becomes critically different. At that time, inconsistent loyalties in the trustee, whether to holders of other securities of the obligor, to the obligor or to an underwriter, are unacceptable. Insistence on independence after a default is necessary to permit the indenture trustee to take vigorous action for the enforcement of rights under the indenture.

The Act's current conflicts standard, disqualifying a trustee from service if a conflict exists without regard to default or the character of the trustee's duties, may unnecessarily restrict an institutional trustee's ability both to act as trustee and to engage in other legitimate business activities. The most inhibiting example of this restriction is the Act's prohibition against qualifying a trustee if the proposed trustee or an affiliate has served as an underwriter of securities issued by the obligor within the previous three years. The Act's broad definition of "underwriter" prohibits these activities even in offerings made exclusively overseas by affiliates of a trustee, a situation where, because no distribution is made in the United States, no registration is required under the Securities Act. Title IV amends the Act to provide a post-default standard. Thus, any of the relationships described in Section 310(b) would no longer be a disabling conflict, prior to a default. After default, such activities would become disabling only if they had occurred within a year of the determination. This statutory change would recognize that relationships between obligors and investment bankers lack the permanency they had in the nineteen-thirties. Other relationships described within section 310(b) charge the trustee with a conflicting interest in circumstances in which the possibility for disloyalty toward indenture security holders are extremely remote. For example, under section 310(b)(9) a trustee's ownership of securities of a person that in turn holds a specified percentage of the obligor's securities can be forbidden conflict, even though the trustee hold those securities in a fiduciary capacity on behalf of another person.

Title IV would recognize the differences in a trustee's duties before and after default by removing these and other restrictions on trustees pre-default conduct. This would be accomplished by making the event of default the time at which conflicts defined by section 310(b) become disabling relationships. To prevent evasion, grace and notice provisions within the indenture would be disregarded for the purpose of determining when a default occurs. In view of the added significance of the existence of a default, the legislation would require the obligor to certify annually whether a default exists under the indenture.

In a significant change from the existing statutory scheme, a creditor relationship would become a prohibited conflict of interest. The omission of the creditor relationship as a disqualification to serve as an indenture trustee has been the source of the criticism under the existing statute. No conflict could be clearer than that between the interests of a trustee with significant loans to a corporate borrower, for example, and that corporation's bondholders. On default, a trustee/creditor may become a competitor for funds of the corporation and, thus, in a relation adverse to the rights of the bondholders. Because most institutional trustees are commercial banks, a creditor relationship with the obligor is an ordinary occurrence. Under current practice, trustee-creditors customarily resign their offices at the time of default, even though resignation is not now compelled by the Act, in recognition that they may no longer be able to represent fairly both the claims of security holders under the indenture and their claims. This Title would accommodate all of these factors by making the creditor relationship a statutory conflict, but, as with other proposed conflict provisions, one that would disqualify the trustee until a default.

Currently, the TIA provides an effective 90-day grace period during which a trustee may eliminate a conflict and restore its eligibility rather than resign. The amendments in Title IV are consistent with this framework. A trustee would have a period of 90 days after the default for the conflict to be eliminated or the default to be cured. If the conflict or default remained, resignation would be required at the end of 90 days. The legislation also would create a procedure under which a trustee with an active conflict of interest may apply to the Commission within the 90-day period after default for permission to continue to serve after the expiration of that period. The expense and inconvenience of compelling the trustee to resign are not warranted when the default at issue may be waived relatively easily if sufficient time is afforded to solicit the waiver. The proposed procedures for application to the Commission would prevent unnecessary resignations for curable technical defaults. No relief from the duty to resign would be available under the procedure for defaults involving failures of payment, however. In other circumstances, continued permission to serve would require, after notice and opportunity for hearing, showings that the default may be cured or waived without undue delay and that the trustee's continued service would not be inconsistent with the interests of holders under the indenture.

Present law stays the effectiveness of a trustee's resignation compelled by section 310(b) until an eligible and qualified successor trustee has assumed office. If, however, a trustee voluntarily resigns, the stay does not apply, so that indenture security holders may be left without the representation of a trustee. This Title would correct this deficiency in the Act by deferring the effectiveness of any trustee's resignation until an eligible successor is in place. This would prevent the possibility of an "orphaned" trust resulting from a voluntary resignation in anticipation of the obligor's default.

In shelf offerings, where many business terms of particular series of debt securities are not fixed until the delayed public sale is made, increased use has been made of the open-ended indenture, historically used for secured first mortgage bonds. The Commission has not qualified indentures where different series of securities issued under the indenture may have conflicting rights and interests. Where there are different series, there could be differing or inconsistent instructions given to or duties required of the trustee in the same manner as if the series had been issued under separate indentures. This Title would define a series to exist under an indenture if security holders of one series may vote to direct the trustee independently from security holders of other series under the indenture. As with current treatment of debt issued under multiple indentures with the same trustee, this conflict would generally have no application if all series are wholly unsecured and rank equally in priority of payment.

D. Trusteeships by foreign person

Recognizing developments in the internationalization of the securities markets, Title IV would authorize the Commission to allow, by rule or order, foreign persons to act as sole trustees under a qualified indenture if the foreign persons can exercise trust powers and are subject to regulation substantially equivalent to that applicable to United States trustees. In prescribing such rules or making such order, the Commission is directed to consider whether U.S. trustees would be accorded similar treatment under the laws of the foreign applicant's home country. This provision would ease the entry of the debt issued by foreign obligors into United States securities markets through the public offering process.

E. Technical changes

Several technical changes would be effected by the proposed amendments:

(1) The obsolete exemption from the Act in section 304(a)(3), applicable only to securities distributed up to six months after the law's original enactment, would be repealed.

(2) References to the four-month period for preferential collection in the Act would be changed to three months in conformity with the Bankruptcy Reform Act of 1978.

(3) A trustee's report concerning its eligibility would not be required on an annual basis. Reports would be required of the trustee only if its status has changed or another event of significance has occurred.

(4) Solicitations of consents from indenture security holders would be facilitated by authorization of record date procedures. Because much publicly-held debt is held in the name of institutional depositories, identification of beneficial owners at any time is difficult and further complicated if, as is often true, the indenture does not provide a record date procedure. This Title would add a statutory record date mechanism, which would allow the trustee and obligor to determine with legal certainty the persons entitled to consent.

(5) Finally, new section 318(d) would make the benefits of the Act automatically applicable to already qualified indentures. Parties to the indenture may contract for higher standards of conduct or independence in accordance with the terms of present section 318(b).

CONCLUSION

The Committee believes passage of the legislation is critical to ensure that the SEC has the personnel and the resources to continue its mission of protecting investors and ensuring the integrity of the capital markets. The legislation provides vital authority for the Commission to address problems of fraud in the international securities markets. The legislation will close gaps in current law to enhance the flow of information to mutual fund and other shareholders. Finally, the legislation will streamline and modernize provisions which regulate the public issuance of debt securities.

SECURITIES ACTS AMENDMENTS OF 1989—SECTION-BY-SECTION ANALYSIS

Title I—Securities and Exchange Commission Authorization Act of 1989

Section 101. This section contains the title of the Act.

Section 102. This section amends Section 35 of the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1990 and 1991. The amounts authorized would be $178,023,000 for the fiscal year ending September 30, 1990 and $212,609,000 for the fiscal year ending September 30, 1991.

Section 103(a). This subsection amends section 4(b) of the Securities Exchange Act of 1934 to add new subsection 4(b)(1), giving the Commission authority to fix the compensation and number of, and appoint and direct, employees of the Commission, without regard to the provisions of chapter 51 or subchapters III and VIII of chapter 53, and chapter 54 of title 5, United States Code, which govern the classification and pay rates of officers and employees of the federal government. This authority is similar to that provided for other financial regulators under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

New subsection 4(b)(2) would give the Commission authority to provide additional compensation and benefits to employees if the same type of compensation or benefits are then being provided, or could be provided, by any Federal bank regulatory agency. These benefits could be provided either in addition to, or instead of, benefits available under title 5 of the United States Code to federal employees generally. The Commission is directed to seek to maintain comparability with the Federal bank regulatory agencies identified in the legislation.

New subsection 4(b)(3) would give the Commission authority to enter leases for real property and would exempt the Commission from any General Services Administration space management regulations or directives. This authority and exemption are similar to the direct leasing and space allocation authortiy of other financial regulators, including the Commodity Futures Trading Commission.

Section 103(b). This subsection contains conforming amendments to title 5, United States Code.

Section 104. This section makes conforming amendments to section 31 of the Public Utility Holding Company Act of 1935, section 321(d) of the Trust Indenture Act of 1939, section 46(b) of the Investment Company Act of 1940, and section 218 of the Investment Advisers Act of 1940.

Title II—International Securities Enforcement Cooperation Act of 1989

Section 201. Section 201 contains the short title.

Section 202. Section 202 of the Act amends Section 24 of the Exchange Act by adding new subsections authorizing the Commission to withhold from disclosure documents furnished to the Commission by foreign securities officials upon certain conditions.

Section 202(a)(1). Section 202(a)(1) is an amendment necessitated by the scheme of amended Section 24 of the Exchange Act, to which the Act adds several subsections. It strikes from Section 24(b) the sentence, "Nothing in this subsection shall authorize the Commission to withhold information from the Congress." That sentence becomes part of new Section 24(e) of the Exchange Act under Section 202(a)(2) of the Act.

Section 202(a)(2). Section 202(a)(2) adds new subsections (c), (d), and (e) to Section 24 of the Exchange Act. New Section 24(c) clarifies the Commission's authority to provide records, as defined in Section 24(a) of the Exchange Act, in its discretion and upon a showing that the information is needed, to any persons deemed appropriate by the Commission by rule. The subsection conditions this discretionary authority on the person receiving the information assuring its confidentiality as the Commission deems appropriate. Section 202(a)(2) of the Act also adds new Section 24(d) to the Exchange Act. Section 24(d) provides that the Commission shall not be compelled to disclose records obtained from a foreign securities authority, if (1) the foreign authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority and (2) the Commission obtains the records under either a procedure authorized by the Commission for use in securities law enforcement or administration or a memorandum of understanding. This amendment will allow the Commission to obtain otherwise unobtainable confidential documents from foreign countries for law enforcement purposes. New Section 24(e) clarifies that nothing in Section 24 authorizes the Commission to withhold information from Congress or not to comply with an order of a United States court in an action initiated by the United States or the Commission. It also clarifies that this section does not alter the Commission's responsibilities under the Right to Financial Privacy Act, 12 U.S.C. 3401 et. seq., as limited by Section 21(h) of the Exchange Act, with respect to transfers of records covered by these statutes.

Section 202(b). Section 202(b) contains conforming amendments to section 45(a) of the Investment Company Act and Section 210(b) of the Investment Advisers Act, conforming those sections to new Section 24(c) of the Exchange Act so that records may be provided to other persons under the conditions stated in Section 24(c).

Section 203. Section 203 of the Act amends the Exchange Act to authorize the Commission to impose sanctions on brokers or dealers, their associated persons, and individuals seeking to become associated persons of brokers or dealers on the basis of misconduct in a foreign country.

Section 203(a). Section 203(a) of the Act amends Section 15(b) of the Exchange Act, the Exchange Act's registration provision. Subsection (a)(1) provides for Commission censure of, limitations on the activities of or revocation or suspension of the registration of brokers or dealers, based upon a conviction rendered by a foreign court of competent jurisdiction of a crime which is substantially equivalent to a felony or misdemeanor as provided by Section 15(b)(4)(B). As in the case of a conviction by a U.S. court, the foreign conviction would have to have occurred within the preceding ten years. The Act thus clarifies the Commission's authority to consider offenses from foreign jurisdictions that might not classify crimes formally as felonies or misdemeanors, e.g., non-common law jurisdictions.

Section 15(b)(4)(B)(i) lists offenses involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense as within the class of felonies and misdemeanors that permit the Commission to sanction brokers or dealers. Subsection (a)(2) of the Act amends this provision by including within this list any substantially equivalent activity, however denominated by the laws of a foreign government. The Act therefore clarifies the Commission's authority to consider such activities even if the foreign government does not denominate them as precisely the same offenses that they constitute within the United States.

Section 15(b)(4)(B)(ii) also allows the Commission to consider offenses arising out of the conduct of various securities-related businesses, including the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, or transfer agent. Subsection (a)(3)(A) of the Act amends Section 15(b)(4)(B)(ii) by including any substantially equivalent activity, however denominated by the laws of a foreign government. The Act accordingly clarifies the Commission's authority to consider such offenses regardless of the employment terms involved, which may differ in foreign countries. Section 15(b)(4)(B)(ii) also permits the Commission to consider offenses arising out of the conduct of the business of an entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Subsection (a)(3)(B), therefore, also amends Section (b)(4)(B)(ii) by including any equivalent foreign statute or regulation. The Act thus clarifies the Commission's authority to consider foreign offenses arising out of the commodities trading business.

Section 15(b)(4)(B)(iii) includes larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, and misappropriation of funds or securities within the list of offenses that trigger Commission sanctions. Subsection (a)(4) of the Act adds any substantially equivalent activity, however denominated by the laws of a foreign government.

Section 15(b)(4)(B)(iv) of the Exchange Act includes violations of Sections 152, 1341, 1342, or 1343 or Chapter 25 or 47 of Title 18 of the U.S. Code within the list of offenses that the Commission may consider. These provisions concern concealment of assets, false oaths and claims, and bribery in connection with bankruptcy; mail fraud; wire fraud; counterfeiting and forgery; and fraud and false statements, respectively. Subsection (a)(5) amends Section 15(b)(4)(B)(iv) by including a violation of a substantially equivalent foreign statute.

Section 15(b)(4)(C) also empowers the Commission to impose sanctions on the basis of permanent or temporary injunctions against acting in the securities-related or commodities-related capacities enumerated in Section 15(b)(4)(B)(ii) and against engaging in or continuing any conduct or practice in connection with such activity or in connection with the purchase or sale of any security. Section (a)(6)(A) amends Section 15(b)(4)(C) by including foreign persons performing substantially equivalent functions, and subsection (a)(6)(C) includes substantially equivalent foreign entities. The Act thereby clarifies the Commission's authority on this point in the same way and for the same reasons as subsection (a)(3)(A). Subsection (a)(6)(B) amends Section 15(b)(4)(C) by including any foreign statute or regulation substantially equivalent to the Commodity Exchange Act, thus clarifying the Commission's authority with the same basis and purpose as subsection (a)(3)(B).

Subsection (a)(7) adds new Section 15(b)(4)(G) to the Exchange Act. Subparagraph (G) empowers the Commission to base sanctions on findings by a foreign securities authority of (1) false or misleading statements in registration or reporting materials filed with the foreign securities authority, (2) violations of statutory provisions concerning securities or commodities transactions, or (3) aiding, abetting, or otherwise causing another person's violation of such foreign securities or commodities provisions, or failing to supervise a person who has committed such a violation. Subparagraph (G) substantially parallels the provisions of existing Sections 15(b)(4)(A), (D), and (E) concerning such findings by the Commission or other securities and commodities regulatory authorities.

Section 203(b). Section 203(b) of the Act amends Section 3(a)(39) of the Exchange Act, which concerns statutory disqualification from self-regulatory organization ("SRO") membership. Under the present statutory and regulatory scheme, a person subject to statutory disqualification is not excluded automatically from the securities business. However, when such a person seeks to become associated with a member of an SRO, that SRO and the Commission have the opportunity, under Sections 15A(g)(2) and 6(c)(2) of the Exchange Act and Rule 19h-1 thereunder, to give special review to the person's employment application or to restrict or prevent reentry into the business where appropriate for the protection of investors. This structural use of statutory disqualification does not change with the Act's amendments. Rather, the amendments expand, by incorporation, the list of findings that result in statutory disqualification.

Section 203(b)(1) of the Act amends Section 3(a)(39)(A), which now lists expulsion or suspension from membership or participation in, or association with a member of, an SRO, commodity contract market, or futures association as resulting in statutory disqualification, to include exclusion in the described manner from the foreign equivalent of an SRO, foreign or international securities exchange, or a foreign contract market, board of trade or futures association.

Similarly, Section 203(b)(2) amends Section 3(a)(39)(B) by expanding it. It currently refers to orders of the Commission or another appropriate regulatory agency suspending or revoking registration as a broker, dealer, municipal securities dealer, or government securities dealer or broker. The amendments to Section 3(a)(39) apply to brokers, dealers, municipal securities dealers, government securities brokers, and government securities dealers of any nationality, because these terms are defined in Exchange Act sections 3(a)(4), 3(a)(5), 3(a)(30), 3(a)(43), and 3(a)(44) without reference to nationality. Under Section 203(b)(2), orders by an appropriate foreign financial regulatory authority denying, suspending, or revoking authority to engage in transactions in contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market, board of trade, or foreign equivalent also will result in statutory disqualification.

Section 203(b)(3) redesignates subparagraphs (D) and (E) of Section 3(a)(39) as subparagraphs (E) and (F), respectively. Section 203(b)(4) adds new subparagraph (D), which includes among the conditions that result in statutory disqualification findings by a foreign or international securities exchange, foreign securities authority, or other foreign authority empowered by a foreign government to administer or enforce its laws relating to financial transactions, to the effect that an individual, by his conduct, was a cause of a suspension, expulsion, or order by the foreign securities authority or other foreign financial regulator or administrator.

Sections 203(b) (5) and (6) of the Act make conforming amendments in newly redesignated subparagraphs (E) and (F) of Section 3(a)(39) of the Exchange Act, adding references to new Sections 3(a)(39)(D) and 15(b)(4)(G) of the Exchange Act, respectively. In addition, under the Act, subparagraph (F), which by cross reference to Section 15(b)(4) of the Exchange Act makes persons convicted of specified felonies and misdemeanors subject to statutory disqualification, adds "any other felony" to the list of crimes that warrant special review. This provision permits the Commission and the SROs to provide special scrutiny of persons who have been convicted of crimes that are not currently specified, such as taking property, assault, murder, and drug trafficking. This amendment does not automatically exclude every person convicted of a felony from the securities business. Rather it permits SROs, subject to Commission review, to consider the facts and circumstances surrounding a particular felony and to impose necessary safeguards to protect the markets and investors from unreasonable risks.

Section 203(c). Section 203(c) of the Act makes conforming amendments. It amends Section 15(b)(6) of the Exchange Act, which authorizes the Commission to censure, limit the activities of, or bar or suspend from association with a broker or dealer any person who has committed or omitted any act or omission enumerated in subparagraphs (A), (D), or (E), has been enjoined as specified in subparagraph (C). By adding to Section 15(b)(6) findings by a foreign securities authority under new Subparagraph (G), Section 203(c) authorizes the Commission to consider such findings when imposing sanctions upon persons who are, or who seek to become, associated persons of a broker or dealer.

Section 203(c) similarly amends Sections 15B(c)(2), 15B(c)(4), 15C(1)(A), 15C(c)(1)(C), 17A(c)(3)(A), and 17A(c)(3)(C) of the Exchange Act by adding new subparagraph 15(B)(4)(G) as a basis for Commission action under those provisions.

Sections 15B(c) (2) and (4), which concern the Commission's disciplinary authority over municipal securities dealers and their associated persons, and which parallel Sections 15(b) (4) and (6), are amended to include a reference to new Section 15(b)(4)(G). Findings of misconduct by a foreign securities authority thus can support Commission sanctions against municipal securities dealers and their associated persons.

Sections 15C(c)(1) (A) and (C), which concern the Commission's sanctioning authority over government securities brokers and dealers and their associated persons, and which also parallel Sections 15(b) (4) and (6), are amended to include a reference to new Section 15(b)(4)(G), for the same reason as above.

Sections 17A(c)(3) (A) and (C), which concern the Commission's sanctioning authority over transfer agents and their associated persons, and which further parallel Sections 15(b) (4) and (6), are amended to include a reference to new Section 15(b)(4)(G) for the same reason.

Section 15C(f)(2) of the Exchange Act currently forbids the Commission from investigating or taking any other action under the Exchange Act against a government securities broker or dealer or its associated persons for violations of Section 15C or the rules or regulations thereunder. The exception is where the Commission, rather than one of the banking regulators (Comptroller of the Currency for national banks, Board of Governors of the Federal Reserve System for state member banks, Federal Deposit Insurance Corporation for insured state non-member banks, and the Office of Thrift Supervision for federally insured savings and loan associations), is the appropriate regulatory agency for the government securities broker or dealer. Section 15C(f)(2), by its own terms, also does not limit the Commission's authority with respect to violations of any other provisions of the Exchange Act or of corresponding rules or regulations. Section 6(c) of the Act extends this exception by forbidding limitations on investigations pursuant to Section 21(a)(2) of the Exchange Act to assist a foreign securities authority.

Section 204. In order to ensure that orders of any regulatory body, foreign or domestic, with authority to suspend or revoke registration or its equivalent are available to the Commission, Section 204 of the Act adds a new definition of the term "foreign financial regulatory authority," as Section 3(a)(51) of the Exchange Act. A "foreign financial regulatory authority" is defined to include any foreign securities authority, which is defined in Section 3(a)(50) of the Exchange Act; governmental or regulatory bodies empowered to administer or enforce laws relating to enumerated financial matters; and membership organizations that regulate members' participation in financial matters. Pursuant to the Act's amendment's to Section 3(a)(39) of the Exchange Act, orders of foreign financial regulatory authorities are deemed sufficient to result in "statutory disqualification," as will such an order limiting registration of the foreign equivalent of any of the enumerated entities.

Section 205. Section 205 of the Act makes parallel amendments to the Investment Company Act of 1940 ("1940 Act") and the Investment Advisers Act of 1940 ("Advisers Act") to clarify and strengthen the Commission's authority to impose sanctions, on the basis of violations of foreign law, on investment advisers or on persons associated or seeking to become associated with an investment adviser or a registered investment company.

Section 205(a). Section 205(a) of the Act amends Section 9(b) of the 1940 Act. Section 9(a) of the 1940 Act generally prohibits a person convicted of a felony or misdemeanor involving securities or the securities business or subject to a temporary or permanent injunction restricting his ability to engage in the securities business from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, unit investment trust, or face-amount certificate company. The automatic statutory disqualification in Section 9(a) is supplemented by the Commission's authority under Section 9(b). Under Section 9(b), the Commission may, after notice and opportunity for hearing, prohibit a person from serving in any of the capacities cited in Section 9(a) or as an affiliated person of a registered investment company's investment adviser, depositor, or prinicpal underwriter if the person has willfully caused a false or misleading statement to be made in any registration statement, application, or report filed with the Commission or if the person has willfully violated or willfully aided and abetted a violation of any provision (including rules and regulations) of the federal securities laws or the Commodity Exchange Act.

In an amendment parallel to those made in Sections 203(a)(7) and 205(b)(8) of the Act, Section 9(b) is amended to add a new paragraph (4) that will authorize the Commission to restrict the activities of any person that has been found by a foreign authority to have (1) made any false or misleading statement in an application or report filed with a foreign securities authority or in a proceeding before the foreign securities authority, or (2) violated or aided and abetted the violation of foreign securities or commodities statutes. Paragraph (4) will, therefore, parallel the provisions of paragraph (1), (2), and (3) of Section 9(b), and extend the statute to equivalent foreign violations.

Section 9(b) also is amended to add two new provisions, Sections 9(b)(5) and 9(b)(6), that will allow the Commission by order to prohibit a person from serving in any of the designated capacities if the person has been convicted by a foreign court of any of the offenses designated in Section 9(a)(1) or has been enjoined by a foreign court in a manner set forth in Section 9(a)(2). Sections 9(a) (1) and (2) automatically disqualify anyone who within the past 10 years has been convicted of any felony or misdemeanor involving, or is subject to a permanent or temporary injunction relating to, acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or in connection with the purchase or sale of any security. Although a conviction or injunction under Section 9(a) (1) or (2) results in an automatic statutory disqualification, a substantially equivalent foreign conviction or injunction would not. However, a substantially equivalent foreign finding will provide a basis for a Commission order prohibiting the individual's association with a registered investment company in any of the capacities designated in the statute. The automatic disqualification provisions of Section 9(a), coupled with the Commission's exemptive authority under Section 9(c) to avoid any inequitable results, are indispensable means of safeguarding the integrity of registered investment companies. The amended section 9(b) does not automatically bar a person solely on the basis of a foreign finding of a violation of foreign law without any prior notice or opportunity for hearing by a U.S. court or administrative agency. Instead, amended Section 9(b) provides that the Commission may impose a bar on a case-by-case basis if it determines that the foreign finding justifies such a sanction. The amendment does not create competitive disparities because, just as Section 9(a) applies equally to U.S. and foreign persons that have been convicted or enjoined in a manner specified in the statute, Section 9(b), as amended, grants the Commission authority to institute an administrative proceeding against either a U.S. or foreign person that has committed an equivalent foreign violation and has been sanctioned by a foreign authority.

Section 205(b). Section 205(b) of the Act amends Section 203(e) of the Advisers Act. Section 203(e) authorizes the Commission to censure, place limitations on the activities or, suspend for up to twelve months, or revoke the registration of an investment adviser where the adviser or an associated person of the adviser has committed, or has been sanctioned for, certain specified violations. Section 205(b) of the Act amends Section 203(e) to include, among the factors that the Commission may consider, violations of foreign law that are substantially equivalent to a violation currently set forth in the statute.

Subsection 203(e)(2) of the Advisers Act authorizes the Commission to consider convictions within the past ten years of certain felonies and misdemeanors. Section 205(b)(1) of the Act amends this section to include convictions by a foreign court of competent jurisdiction of crimes substantially equivalent to a felony or misdemeanor. The Act thus clarifies the Commission's authority to consider foreign criminal findings that the foreign jurisdiction may not classify as a "felony" or "misdemeanor."

Section 203(e)(2)(A) of the Advisers Act lists offenses involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense as within the class of felonies and misdemeanors that authorize the Commission to discipline investment advisers. Section 205(b)(2) of the Act amends Section 203(e)(A) by including within this list any substantially equivalent activity, however denominated by the laws of a foreign government.

Section 203(e)(2)(B) of the Advisers Act authorizes the Commission to consider offenses arising out of the conduct of various securities-related businesses. Included is any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, or entity or person required to be registered under the Commodity Exchange Act. Subsection 205(b)(3) of the Act amends Sections 203 (e)(2)(B) and (e)(3) to include offenses arising out of the conduct of any foreign person performing a function substantially equivalent to any of the above.

Section 203(e)(2)(C) of the Advisers Act includes larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, and misappropriation of funds or securities within the list of offenses that may trigger Commission sanctions. Section 205(b)(4) of the Act adds any substantially equivalent offense, however denominated by the laws of a foreign government.

Section 203(e)(2)(D) of the Advisers Act includes violations of Section 152, 1341, 134, or 1343 of Chapter 25 or 47 of title 18 of the U.S. Code within the list of offenses that the Commission may consider. These provisions concern concealment of assets, false oaths and claims, and bribery in connection with bankruptcy; mail fraud; wire fraud; counterfeiting and foregy; and fraud and false statments, respectively. Section 205(b)(5) of the Act amends Section 203(e)(2)(D) to include a violation of a substantially equivalent foreign statute.

Section 203(e)(3) of the Advisers Act authorizes the Commission to impose sanctions where an investment adviser or associated person has been enjoined from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank or insurance company or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank or insurance company or entity or person required to be registered under the Commodity Exchange Act, or from engaging in any practice in connection with any of these activities or in connection with the purchase or sale of any security. Section 205(b)(3) and 205(b)(6) of the Act amend Advisers Act Section 203(e)(3) to include injunctions issued by any foreign court of competent jurisdiction that concern substantially equivalent activities.

Section 205(b)(7) of the Act is a technical amendment to Section 203(e)(5) of the Advisers Act. Section 203(e)(5) is amended to include violations of the Commodity Exchange Act. This technical amendment conforms Section 203(e)(5) with Section 203(e)(4) of the Advisers Act and Section 15(b)(4)(D) and 15(b)(4)(E) of the Exchange Act.

Section 205(b)(8) of the Act adds new Section 203(e)(7) of the Advisers Act. This new subsection empowers the Commission to base sanctions on findings by a foreign financial regulatory authority of (1) false or misleading statements in registration or reporting materials filed with a foreign securities authority, (2) violations of statutory provisions concerning securities or commodities transactions, or (3) aiding, abetting, or otherwise causing another person's violation of such foreign securities or commodities provisions, or failing to supervise a person who has committtted such a violation. Subsection (e)(7) substantially parallels the provisions of existing Section 203(e) (1), (4) and (5) concerning such findings by the Commission or other securities and commodities regulatory authorities. This section of the Act parallels Sections 203(a)(7) and 205(a) of the Act, which add Subsection 15(b)(4)(7) of the Exchange Act and Section 9(b)(4) of the 1940 Act.

Section 205(c). Section 205(c) of the Act amends Section 203(f) of the Advisers Act, which authorizes the Commission to impose sanctions upon persons associated or seeking to become associated with an investment adviser if the person has committed or omitted any act or omission set forth in Sections 203(e) (1), (4) or (5) or has been convicted or enjoined as set forth in Sections 203(e)(2) or 203(e)(3).

Section 203(f) is amended to include a reference to new Section 203(e)(7), thus authorizing the Commission to consider such findings when imposing sanctions upon persons who are, or seek to become, associated with an investment adviser.

Section 206. Section 206 amends Sections 2(a) of the 1940 Act and Section 202(a) of the Advisers Act to include definitions of "foreign securities authority" and "foreign financial regulatory authority". These definitions are identical to the definitions of foreign securities authority in Section 21(a)(2) of the Exchange Act and the definition of foreign financial regulatory authority added by Section 204 of the Act.

Section 207. Section 207 adds a new subsection (f) to Section 4 of the Exchange Act to authorize the Commission to accept reimbursement of expenses from or on behalf of foreign securities authorities for expenses incurred by the Commission in conducting investigations on their behalf or in providing other assistance.

Title III—Shareholder Communications Improvement Act of 1989

Section 301. Section 301 contains the short title of the Act, the "Shareholder Communications Improvement Act of 1989."

Section 302. Section 302 of the Act amends Section 14 of the Securities Exchange Act of 1934.

Section 302(a)(1). Section 302(a)(1) will extend to investment company security holders the benefits of the shareholder communication rules which require brokers and dealers, banks, associations, and other entities that exercise fiduciary powers holding securities as nominees to provide proxies, consents, and authorizations to beneficial security holders and to provide registrants, upon request, with beneficial owner information so that registrants can send annual reports and voluntary communications directly to the beneficial security holders. Currently, Section 14(b) and the rules adopted thereunder only apply with respect to securities registered under Section 12 of the Exchange Act, which most investment company securities are not. This amendment recognizes the changes that have occurred in the form of ownership of investment company securities and will facilitate communication between investment companies and beneficial owners of investment company securities.

Section 302(a)(2). Section 302(a)(2) of the Act will amend Section 14(b) to require broker and bank nominees to transmit information statements to the beneficial owners of securities. Currently, only proxies, consents, and authorizations are required to be delivered to beneficial owners of securities when securities are held in nominee name. This amendment will assure that beneficial owners of securities held in nominee name receive information statements as well as proxies.

Section 302(b). Section 302(b) of the Act will amend Section 14(c) of the Exchange Act to require investment companies, in addition to other registrants, to transmit information statements to security holders of record. Currently, Section 14(c) requires the issuance of information statements only with respect to securities registered pursuant to Section 12 of the Exchange Act. Like the amendments to Section 14(b), this amnendment will facilitate communication between security holders and issuers of information statements and will provide investment company security holders the same communication as that accorded to non-investment company security holders.

Section 303. Section 303 of the Act provides for its effective date. The amendments to Section 14(b) will be effective on the expiration of one-hundred and eighty days after the date of enactment so that nominees can integrate investment company security holders into their established proxy delivery and communication systems. The delayed effective date also will permit broker and bank nominees to extend existing proxy delivery systems to include information statements. The amendment to Section 14(c) also would take effect on the expiration of one hundred and eighty days after the enactment to allow investment companies to extend established communication systems for proxy delivery to include information statements.

Title IV—Trust Indenture Reform Act of 1989

Section 401. Section 401 contains the short title, "The Trust Indenture Reform Act of 1989."

Section 402. The Act would add a new reference to section 305 in paragraph (8) of section 303, a change necessitated by new procedures related to qualification of indentures for delayed offerings of debt securities under the Securities Act of 1933 (the "Securities Act").

Section 403. Section 403(1) would strike the exemption afforded by section 304(a)(3), which has been obsolete since 1940, because the exemption concerned only the distribution of securities occurring up to six months after the original enactment of the statute. Section 403(2) deletes a qualification from section 304(a)(4)(A) that limits Trust Indenture Act exemptions related to enumerated exemptions in section 3(a) of the Securities Act as in force in 1939. The effect of this deletion would be that any debt security exempted from registration by paragraphs (2), (3), (4), (5), (6), (7), (8), or (11) of Securities Act section 3(a) would also be exempt from qualification. This would hold true without regard to the date any such Securities Act exemption had been enacted. A further result would be that any future amendment to the relevant paragraphs of section 3(a) of the Securities Act, whether expanding or contracting the scope of an exemption, would effectively be a coordinating amendment to the Trust Indenture Act exemption.

Section 403(3) would extend the Securities and Exchange Commission's (the Commission) exemptive power through amendments to section 304(d), which in its present form is limited to exemptions by order for debt offerings of foreign persons. New section 304(d) would permit the Commission to waive or modify the statutory requirements where their application would be unnecessary or inappropriate for the protection of investors. The Commission would be able to adopt the statutory requirements to particular situations and developing market conditions under standards that look to the statute's fundamental purposes. Changes in the types of debt securities, in the methods of public financing and in the character of relations between obligors and their financial intermediaries have produced situations where the exact demands of the law's requirements do not serve its own intent and are incompatible with reasonable business terms. Under existing law, the Commission is unable to provide relief. General exemptive authority is a necessary complement to the self-executing inclusion of mandatory indenture terms effected through new section 318(c). Without such authority in the Commission, needless costs and restrictions may be imposed without corresponding public benefit.

The amendment allows the Commission to grant an exemption from any provision, in full or in part, and with or without such conditions as the Commission may require. Both exemptive rules and orders are contemplated. The Commission will be required to adopt rules prescribing procedures for grants of exemption, to expdite the exemptive process without imposing undue burdens on the Commission. The new subsection would also vest in the Commission discretion to decline to entertain any application for exemption, a decision that would not be subject to judicial review.

Section 404. In connection with the new post-default standard for determining conflicts of interest, the Act would amend section 305 to remove the provision requiring that the Commission refuse qualification if it finds that any person designated as trustee holds a conflict of interest within the meaning of section 310(b) of the Act. Since the amendment to section 310(b) would define disqualifying conflicts of interest with reference to defaults under the indenture, a finding by the Commission at the time of qualification that the trustee has no impermissible conflict of interest is unnecessary.

Section 404 also would facilitate qualification of indentures used in connection with delayed offerings of debt securities purusant to rule 415 under the Securities Act. Under existing law, effectiveness of qualification is coordinated in all respects with that of the registration statement, a procedure based on the premise that all indenture terms and the identity of the trustee would be fixed at the time of the registation's effectiveness. While this premise conformed to the administrative and financial conditions extant in 1939, it has become obsolete because of delayed offerings now permitted under Securities Act rule 415. The indentures used in such offerings frequently do not specify business terms until the actual sale of the securities at some date later than the effective date.

The procedure under this section also would be available for qualification of indentures relating to debt securities required to be included on a registration statement even though such securities may never be issued (e.g., either equity securities exchangeable into debt or the issuance of debt securities in lieu of cash interest payments at the issuers election). Further, as a result of the amendment to section 310(a) that would permit foreign trustees to act as sole trustee under a qualified indenture, foreign issuers would be able to use this procedure.

In order to facilitate compliance with the Act for delayed offerings, all indentures for registered debt securities would be filed at the time the registration statement is filed, and qualified at the time the registration statement becomes effective pursuant to section 305(b)(1). However, pursuant to section 305(b)(2), the issuer of any securities to be sold on a delayed basis would be permitted to file an application for the purpose of determining the eligibility of the trustee for such securities at such time and in accordance with rules promulgated by the Securities and Exchange Commission pursuant to rule making authority provided in the statute.

It is anticipated that such rules would require that an application be filed with the Commission within an appropriate period of time after sale of any portion of the securities included in the registration statement. Purusant to the revised statute, if the trustee meets the eligibility requirements of the Act, the application would become effective the tenth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors. It is anticipated that the ten day period would be accelerated in almost all cases. The Commission would be authorized to issue a refusal for any application where a determination is made that the trustee does not meet the eligibility standards of the Act. The revised provision also would require an obligor to provide a successor trustee within five calendar days of a refusal order for such application.

It is anticipated that the incidence of ineligible trustee would be de minimis, because the provisions of section 310(a) only require that the trustee be authorized to exercise corporate trust powers; be subject to supervision or reexamination by Federal, State, Territorial or District of Columbia authority; and have a combined capital and surplus of at least $150,000.

Section 405. Section 405 would provide the Securities and Exchange Commission with a means to enforce complaince with the qualification procedure set forth in section 404 of the Act. Section 309(b) would be amended to authorize the Commission to issue a stop order pursuant to section 8(d) of the Securities Act, suspending the effectiveness of the registration statement relating to such security, if the issuer fails to file an application as provided for by section 305(b)(2).

Section 406. Section 406 would give the Commission the power to permit certain foreign persons to act as sole trustee under the indenture of a foreign obligor. The section would allow for trusteeships by business organizations that are not in corporate form, but are not natural persons. The conditions for availability would be substantial equivalence of trust powers and regulation to the powers (in corporate or similar form) and regulation of institutional trustees in the United States. Trustees not meeting these standards would be required to seek permission to serve under amended section 304(d). The Commission's authority under section 406 could be exercised by rule or order. Rulemaking authority will permit the Commission to exempt trustees of an entire jurisdiction upon a finding that the specified conditions are met. In prescribing rules or regulations or making orders under this section, the Commission is directed to consider whether U.S. institutions could serve as sole trustees under the laws of the foreign institution's home country.

Section 407. Section 407 would relocate the proscription against an obligor or its affilate serving as trustee under its own indenture. The change would be necessitated by the amendment to section 310(b), generally making conflicts of interest irrelevant to a trustee's eligibility prior to default. An obligor or its affiliates should not serve as trustee on the obligor's debt securities under any circumstances.

Section 408. Significant changes to section 310(b) would be effected by section 408. Most notably, the amendment would permit a trustee to serve under a qualified indenture so long as there is no default under the indenture. The technical conflicts currently described in section 310(b) furnish no incentive to a trustee to act against the interests of indenture security holders so long as no default exists. Prior to default, the indenture trustee's duties are ministerial involving no substantial exercise of discretion on behalf of security holders. In contrast, at the time of default, the indenture trustee is transformed into an active party representing the indenture security holders, so that insistence on strict standards of independence is necessary.

"Default" for purposes of this amendment means default as defined within the indenture. Periods of grace and requirements of notice, however, must be disregarded for purpose of the conflicts standard in order to prevent avoidance of the disqualification standard through definitions in the indenture.

As further assurance of the trustee's independence after default, the amendment would add new paragraph (10) to section 310(b) to define creditor status as a proscribed conflict. Lending relationships between trustee banks and obligors are conventional and, prior to default, involve little possibility of prejudice to the interests of holders under an indenture. Although present law does not prohibit a trustee that lends to an obligor from serving under a qualified indenture at any time, such trustees almost invariably will resign after a material default, in acknowledgement of the conflict of interest that the lending relationship entails.

New section 310(b)(10) would recognize this reality. The amendment would make exception to the disqualifications of creditors in the situations described in paragraphs (1), (3), (4), and (5) and (6) of section 311. These exceptions generally allow for incidental creditor relations, such as debt acquired through the trustee's ownership of the obligor's debt securities or incurred through rented property, which ordinarily do not involve opportunity for material conflict with the interests of indenture security holders.

The amendment to section 310(b)(1) would codify an interpretative position concerning the possibility of conflict to a trustee serving under several series of a single indenture. Contemporary forms of indenture often allow for significant differences between separate series under single indenture. The defintion of series at the end of the subsection would generally confine application of the position to series with separate voting rights, and, consistent with section 310(b)(1)(i), will create no conflict between series that are wholly unsecured and rank pari passu. This definition would generally not include more familar forms of securities such as the mortgage bond indentures of public utilities, under which bonds are issuable in series, but voting rights are in common.

Section 310(b) (2) and (3) would be modified to delete reference to obligors. The prohibitions of an obligor's acting as trustee on its own indenture would be covered by new section 310(a)(5), which applies before and after default. The definition of "underwriter" for 310(b) purposes would be changed to reduce the relevant period from three years to one year. Section 310(b)(9) would be amended to relate the present check of holdings of the obligor's securities by the trustee in other fiduciary capacities to the date of default and anniversaries thereof while the indenture securities remain in default.

A new provison would create a procedure under which the trustee's duty to resign may be stayed in certain cases. The mechanism is intended to prevent unnecessary resignation in the event of a curable technical default. Once a default has been cured, the indenture trustee would be permitted to continue to serve, just as if the conflict itself had been eliminated. The provision concerning effectiveness of trustee's resignations is relocated and modified to apply to all resignations, rather than compelled resignations, to prevent abandonment of a trusteeship in anticipation of an obligor's default.

The subsection would be changed to substitute direct statutory commands for the directives to include required provisions within the indenture. This conforms to the operation of new subsection 318(c). Statements such as "the indenture shall provide," which would suggest the necessity to include required terms in the text of qualified indentures, would be eliminated. At the same time, indenture terms expressly designated under existing law as permitted optional terms would be made automatically applicable unless the indenture specifically would provide that particular optional terms are excluded. This technique would recognize the almost universal practice of including most of the permitted options within qualified indentures.

Section 409. In addition to the changes to statutory commands and to automatic inclusion of previously optional terms, the amendment would change the period for preferential collections from four months to three months to make the Trust Indenture Act consonant with the Bankruptcy Reform Act of 1978. The four-month period would be preserved for actions commenced under prior law.

Section 410. Section 410 would amend section 312 to impose duties by statutory command.

Sections 411 and 412. The amendment would eliminate the requirement for a trustee to report on its eligibility and other matters where no change in eligibility or other specified event has occurred. Existing law requires the report annually. The change to statutory command would also be made.

Section 413. In addition to the changes to statutory commands and to automatic inclusion of previously optional terms, section 314 would be amended to require an annual no-default certification from the obligor. Periods of grace and notice again will be disregarded for this purpose. The Act would specify officers of an obligor who should have adequate knowledge of its affairs as the persons eligible to execute the certification. Section 314(d) would also be amended to eliminate repetition.

Section 414. This would make the editoral changes to section 315, imposing duties by statutory command and automatically including previously optional terms.

Section 415. In addition to the editorial changes, section 415 would apply section 316's requirements on voting procedures to separately voting series covered by section 310(b)(1). New subsection (c) would authorize an obligor to set a record date for solicitations of votes or consents, a technical addition that will alleviate considerably administrative problems in the conduct of such solicitations. The reference to votes or consents permitted by section 316(a) is intended to exclude any inference that the record date procedure is available only when section 316(a) specifically describes the action under consideration. As a result, the record date procedure may be used for any vote, so long as the action is not forbidden by the statue.

Section 416. This section would make the editorial changes to section 317, consistent with section 414.

Section 417. Section 318(a) would be amended editorially. New section 318(c) would be the operative provision for self executing inclusion of mandatory indenture terms and would make the Act's benefits available to indentures qualified under prior procedures. The new subsection would eliminate the necessity of reciting the required terms within qualified indentures. The proviso to the new subsection is intended to make it clear the optional provisions permitted by section 310 to 317 are not part of a previously qualified indenture unless actually included. Because of the terms of existing section 318(b), the Act will not prevent future indentures from prescribing higher standards of independence.

Section 418. The addition would clarify the status of prescribed indenture provisions as federal questions. Jurisdiction is concurrent in federal and state courts to preserve a plaintiff's right to select a forum.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill. This bill will authorize funds to enable the SEC to carry out its regulatory responsibilities under current law and give the SEC additional authority to establish compensation for its employees, facilitate the coordination of international enforcement efforts, close gaps in current law with respect to the flow of information to shareholders, and streamline and modernize current law with respect to the issuance of debt securities, with no overall increase in the regulatory burden.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirments of subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF THE LEGISLATION

The Committee has requested a cost estimate of this legislation under the provision of Section 403 of the Congressional Budget Act of 1974. The cost estimate of the Congressional Budget Office appears below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1989.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Securities Acts Amendments of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: Securities Acts Amendments of 1989.
3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, September 20, 1989.
4. Bill purpose: Title I of the bill would authorize the appropriation of $178.0 million for fiscal year 1990 and $212.6 million for fiscal year 1991 for the Securities and Exchange Commission (SEC). In addition, the bill would authorize the SEC to fix the compensation of employees without regard to Title 5, United States Code, which governs the pay rates of federal employees. For fiscal year 1990, the President requested an appropriation of $168.7 million.

Other provisions in the bill would revise various securities regulations. Title II contains a number of provisions aimed at facilitating cooperation between the United States and foreign countries in securities law enforcement. Title III would require large shareholders, such as investment companies, to receive better information about specific securities than under present law. Title IV would streamline disclosure requirements for the issuance of debt securities.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Authorization level	178.0	212.6			
Estimated outlays	162.0	209.5	19.1		

The costs of this bill fall within budget function 370.

Basis of estimate: This estimate assumes that the full amounts authorized will be appropriated for each fiscal year. Estimated outlays reflect historical spending patterns for the ongoing activities of the SEC.

6. Estimated cost to State and local governments: None.
7. Estimate comparisons: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Douglas Criscitello.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

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